Supreme Court, U.S.
FILED

00 898 NOV 2 4 2000

OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

ROBERT L. HASKINS, SR.,
Petitioner,

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a.k.a., PRUDENTIAL INSURANCE AND FINANCIAL SERVICES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FRANCIS J. LANDRY
Counsel of Record
WASSERMAN, BRYAN, LANDRY & HONOLD, LLP
300 INNS OF COURT BUILDING
405 NORTH HURON
TOLEDO, OH 43604
(419) 243-1239

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

109 + f/o 1's

QUESTIONS PRESENTED FOR REVIEW

1. Whether, in a case involving a claim of improper discharge from employment under the Civil Rights Act of 1991 (Title VII) and the Age Discrimination in Employment Act (ADEA), Petitioner should be compelled to arbitrate his claims where Petitioner was not provided a copy of the rules delineating the claims subject to arbitration, where his employer took no steps to inform him of such rules, and where the Form U-4 Petitioner signed did not specifically delineate arbitrable claims.

2. Whether, pursuant to the statutory language of and legislative history surrounding the Civil Rights Act of 1991, the Court of Appeals committed error in failing to apply the "appropriate" standard established by the First Circuit Court of Appeals.

3. Whether, in applying the "long-standing principles of contract law," the Court of Appeals committed error in charging Petitioner with knowledge of the arbitration agreement and in failing to construe ambiguities in favor of Petitioner.

4. Whether it was improper for the Court of Appeals to enforce the arbitration agreement in this case since Petitioner was represented by a labor union and since compelling arbitration would interfere with and foster tensions with collective rights.

PARTIES TO THE PROCEEDING

Petitioner

Robert L. Haskins, Sr., Petitioner and Plaintiff-Appellant below, is a 56-year-old black male who was employed by Respondent and represented by the United Food and Commercial Worker's International Union. Petitioner is an individual and has no corporate affiliations.

Respondent

Respondent, Defendant-Appellee below, The Prudential Insurance Company of America, a.k.a. Prudential Insurance and Financial Services, is a corporation headquartered, locally in Maumee, Ohio, and nationally in Newark, New Jersey. There are no parent companies and no subsidiary corporations of Respondent.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vii

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 2

STATEMENT OF THE CASE 2

Statement of Facts 2

Description of Proceedings Below 4

ARGUMENT 5

A. The decision of the Court of Appeals conflicts with this Court's decision in *Wright*, the Ninth Circuit's decision in *Lai*, and the First Circuit's decision in *Rosenberg* in regard to the applicable standard in arbitration claims arising pursuant to the Civil Rights Act of 1991 and the Age Discrimination in Employment Act (ADEA). 5

B. The Court of Appeals erroneously neglected congressional intent and legislative history pertaining to the applicable standard in arbitration claims arising pursuant to the Civil Rights Act of 1991 and the ADEA. 7

C. The Court of Appeals erroneously failed to apply the "appropriate" standard to Petitioner's claim where Respondent failed to provide a copy of or familiarize Petitioner with the NASD Code which identified the types of disputes to be arbitrated. 8

D. The Court of Appeals erroneously applied common-law principles of contract where congressional intent and legislative history required otherwise, and where the language of the Form U-4 was ambiguous. 10

E. The Court of Appeals erroneously enforced the arbitration agreement in this case since Petitioner was represented by a labor union and since compelling arbitration would interfere with and foster tensions with collective rights. 11

CONCLUSION 12

APPENDIX

Appendix A
United States Court of Appeals for the Sixth Circuit Opinion and Judgment of August 28, 2000, reversing the district court judgment and remanding case for entry of an order dismissing the case and compelling arbitration 1a

Appendix B
Order Issued by District Court dated March 15, 1999, denying Defendant's motion for dismissal and to compel arbitration 33a

Appendix C
First Amended Complaint With Jury Demand Endorsed 44a

Appendix D
Form U-4 Uniform Application for Securities Registration or Transfer 57a

Appendix E
42 U.S.C. §§ 2000e, et seq. (pertinent provisions) 67a

Appendix F
74 U.S.C. § 1981 . . . . . 73a

Appendix G
29 U.S.C. §§ 621, 623, 626 & 631 . . . . . 74a

Appendix H
9 U.S.C. §§ 1, 2, 3, 4, 16 . . . . . 82a

Appendix I
Ohio Revised Code Chapter 4112.02(A) and
4112.99 . . . . . 87a

TABLE OF AUTHORITIES

DECISIONS

United States Supreme Court

Alexander v. Gardner Denver Company,
415 U.S. 36 (1974) 11

Mastrobuono v. Shearson Lehman Hutton, Inc.,
514 U.S. 52, 115 S.Ct. 1212,
131 L.Ed.2d 76 (1995) 11

Mitsubishi Motor Corps, v. Soler Chrysler Plymouth, Inc., 473 U.S. 614,
105 S.Ct. 3346 (1985) 7

Circuit Courts of Appeal

Prudential Insurance Co. Of America v. Lai
42 F.3d 1299 (9th Cir. 1994) 5

Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 170 F.3d 1 (1st Cir. 1999) . . *passim*

Seus v. John Nuveen & Co.,
146 F.3d 175 (3d Cir. 1998) 6

Wright v. Universal Maritime Serv. Corp.,
525 U.S. 70, 119 S. Ct. 391 (1998) 5, 6

Ohio Revised Code

R.C. 4112.02(A) 2

R.C. 4122.99 2

United States Code

9 U.S.C. §§ 1 et seq 2

28 U.S.C. §1254(1) 1

28 U.S.C. §1331 1

28 U.S.C. §1367 1

29 U.S.C. §§ 621 et seq. 1, 2

42 U.S.C. §1981 . . . . . 1, 2

42 U.S.C. §§ 2000e et seq. 1, 2

Legislative Material

137 Cong. Rec. S15,472-78 (daily ed. Oct. 30, 1991) (statement of Sen. Dole) (stating that the arbitration provision encourages arbitration, but "where the parties knowingly and voluntarily elect to use these methods") 5, 7

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit is reported at ___ F.3d ___, 2000 U.S. App. LEXIS 21757, 2000 FED App. 0283P (6th Cir. 2000). A copy of the Opinion is included in Appendix A at 1a-30a. The corresponding Judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 28, 2000 and is included in Appendix A at 31a-32a. The Order of the District Court for the Northern District of Ohio, denying Respondent's motion for dismissal and to compel arbitration, is unpublished and is included in Appendix B at 33a-43a.

JURISDICTION

In the within case the judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 28, 2000. This decision was recommended for full text publication and has been published at 2000 U.S. App LEXIS 21757, 2000 FED App. 0283P, ____ F.3d ____ (6th Cir. 2000). A copy of this decision is attached, hereto, as Appendix A, 1a - 30a. The jurisdictional basis for federal jurisdiction in the Court of first instance was pursuant to the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (Title VII), The Civil Rights Act of 1866, and the Age Discrimination in Employment Act (ADEA). Jurisdiction was invoked pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 621 et seq., 42 U.S.C. § 2000(e) et seq. and 42 U.S.C. § 1981. Petitioner also invoked the District Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for the Fourth Claim for Relief under Ohio Revised Code § 4122.99, as amended. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Statutes involved, the Civil Rights Act of 1991 (Title VII), 42 U.S.C. §§ 2000(e) et seq., the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 et seq., and the Civil Rights Act of 1866, 42 U.S.C. § 1981, the American Arbitration Act, 9 U.S.C. §§ 1 et seq., and Ohio Revised Code §§ 4112.02(A) and 4112.99, are set forth in pertinent part in Appendix E, F, G, H, I, 67(a) - 88 (a).

STATEMENT OF THE CASE

Statement of Facts

Robert L. Haskins, Sr. is a 56-year-old black male who was employed by Respondent and represented by the United Food and Commercial Worker's International Union. Respondent terminated the employment of Petitioner on June 12, 1997. Prior to termination and as a condition of his continued employment with Respondent, Petitioner executed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") on June 17, 1983. The Form U-4 contained, *inter alia*, a clause pertaining to arbitration ("arbitration provision"). The arbitration provision states in full:

> "I agree to arbitrate any dispute, claim, or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which I register, as indicated by Question 8."

Neither the arbitration provision nor any other clause in the Form U-4 elaborates on the types of claims subject to arbitration.

The Form U-4 contains another clause ("employer certification"), signed by an agent of Respondent, which states in part:

> "**To the best of my knowledge and belief**, the applicant is currently bonded where required, and, at the time of approval, **will be familiar with the statute(s), constitution(s), rules and by-laws of the agency, jurisdiction or self-regulatory organization with which this application is being filed**, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein."

The reference in the arbitration provision, *supra*, to "Question 8" indicates Petitioner's plan to register with the National Securities and Exchange Commission ("NASD"). Therefore, the rules, constitutions and by-laws mentioned in both provisions are, in the present case, those of the NASD. The NASD provision relating to arbitration provides for:

> "the arbitration of any dispute, claim or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of such associated person(s) with such member ***."

However, Petitioner never received the NASD's rules, constitutions or by-laws and therefore was never informed of

the statutory and state rights he would surrender. Nor did any agent of Respondent discuss the arbitration provision with Petitioner. Therefore, Respondent attempted to compel arbitration of claims allegedly enumerated within said set of rules of which Petitioner was never aware.

Description of the Proceedings Below

The District Court disposed of this case by denying Respondent's motion for dismissal and to compel arbitration. Judge Carr held in the District Court that the arbitration provision in the Form U-4 was not "appropriate," and therefore unenforceable, because Respondent failed to provide a copy of or familiarize Petitioner with the NASD code, as directed by the Form U-4 itself. Respondent appealed to the United States Court of Appeals for the Sixth Circuit, which reversed the District Court's ruling and remanded for an order to compel arbitration. The Court of Appeals applied the "long-standing principles of contract law" in ruling that Petitioner, by signing the U-4 Form, is charged with knowledge of the claims subject to arbitration and should be required to arbitrate his claims, absent a showing of fraud, duress, or other grounds upon which the contract may be voided. (Appendix A, 20a).

ARGUMENT

A. The decision of the Court of Appeals conflicts with this Court's decision in *Wright,* the Ninth Circuit's decision in *Lai,* and the First Circuit's decision in *Rosenberg* in regard to the applicable standard in arbitration claims arising pursuant to the Civil Rights Act of 1991 and the Age Discrimination in Employment Act (ADEA).

The questions herein presented reveal a split in the Circuit Courts of Appeal regarding the applicable standard in arbitration claims arising pursuant to the Civil Rights Act of 1991 and the ADEA. The Ninth Circuit Court applies a "knowing" standard, the origin of which comes from the legislative history surrounding § 118 of the Civil Rights Act of 1991. *Prudential Insurance Co. Of America v. Lai*, 42 F.3d 1299 (9th Cir. 1994). In *Lai*, the court declined to compel arbitration, stating that a requirement of actual knowledge is justified by the legislative history requiring parties to "knowingly and voluntarily" avail themselves to arbitration proceedings. See e.g. 137 Cong. Rec. S15,472--78 (daily ed. Oct. 30, 1991) (statement of Sen. Dole) (stating that the arbitration provision encourages arbitration, but "where the parties knowingly and voluntarily elect to use these methods").

Alternatively, the First Circuit Court applied the "appropriate" standard based on the operative language found in §118 of the Civil Rights Act of 1991, which says that "...where **appropriate** and to the extent authorized by law,...arbitration...is encouraged to resolve disputes arising under [these laws]." (Emphasis added). *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 170 F.3d 1 (1st Cir.

1999). In *Rosenberg*, the court held that a Form U-4 arbitration provision was not "appropriate" because the employer failed to provide a copy of or otherwise familiarize the employee with the NYSE code which identified the types of disputes to be arbitrated.

The "appropriate" standard approach found support in a recent Supreme Court decision which noted the same language in the Americans with Disabilities Act ("ADA"). *Wright v. Universal Maritime Serv. Corp.*, 525 U.S. 70, ___, 119 S. Ct. 391, 397 n. 2 (1998) (concluding that a union agreement to arbitrate must be clear and unmistakable to be "appropriate" under the ADA, but taking no position on the effect of that language in areas outside of collective bargaining). (Appendix B, 41a)

Finally, the Third Circuit follows the principles of contract law that the a party is generally chargeable with knowledge of the existence and scope of an arbitration clause within a document signed by that party, in the absence of fraud, deception or other misconduct that would excuse the lack of such knowledge. See *Seus v. John Nuveen & Co.*, 146 F.3d 175 (3d Cir. 1998).

The Sixth Circuit applied the principles of contract law in deciding that Petitioner should be forced to arbitrate his claim. Although this ruling follows the approach taken by the Third Circuit, it conflicts directly with the First Circuit and Ninth Circuit in deciding the same legal issue.

B. The Court of Appeals erroneously neglected congressional intent and legislative history pertaining to the applicable standard in arbitration claims arising pursuant to the Civil Rights Act of 1991 and the ADEA.

Congressional intent must be the "litmus test" for the waiver of judicial remedies. *Mitsubishi Motor Corps v. Soler Chrysler Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 3354 (1985). The "appropriate" standard, which was adopted based on its inclusion in the 1991 CRA and legislative history, is consistent with the ruling in *Mitsubishi*.

The First Circuit court based its "appropriate" standard on statutory language contained in § 118 of the Civil Rights Act of 1991 ("1991 CRA") which affects Title VII, the ADEA and the ADA, *supra*. See *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1 (1st Cir. 1999). Additionally, legislative history reveals that the "appropriate" standard is consistent with congressional intent with regard to claims arising from the Civil Rights Act of 1991 and the ADEA. See e.g. 137 Cong. Rec. S15,472--78 (daily ed. Oct. 30, 1991) (statement of Sen. Dole) (stating that the arbitration provision encourage arbitration, but "where the parties knowingly and voluntarily elect to use these methods"). Judge Cole's dissent, p. 23-24. (Appendix A, 29a).

In regard to this language, Judge Cole, in his dissent in the Court of Appeals below, stated: "As to the first part of the CRA clause at issue, the majority states that it declines 'to require a heightened standard that arbitration be "appropriate" without a clear Congressional requirement to do so,' and decides the case on contract law grounds. I can think of no clearer signal from Congress than statutory language coupled with relevant legislative history to direct the courts to

faithfully interpret this provision of the CRA. Further, the Supreme Court has already indicated that the identical statutory language, in a provision of the Americans with Disabilities Act of 1990 (ADA), has meaning." See Court of Appeals, Dissent, p. 23-24. (Appendix A, 29a).

In accordance with Judge Cole's dissent in the Court of Appeals below, the "appropriate" standard most accurately reflects congressional intent and legislative history regarding compelled arbitration claims pursuant to the 1991 CRA and ADEA. In ruling otherwise, the Court of Appeals committed error.

C. The Court of Appeals erroneously failed to apply the "appropriate" standard to Petitioner's claim where Respondent failed to provide a copy of or familiarize Petitioner with the NASD Code which identified the types of disputes to be arbitrated.

Judge Carr held in the District Court that the arbitration provision in the Form U-4 was not "appropriate," and therefore unenforceable, because Respondent failed to provide a copy of or familiarize Petitioner with the NASD code, as directed by the Form U-4 itself. Judge Carr adopted the reasoning of the First Circuit in *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1 (1st Cir. 1999). The facts in *Rosenberg* run virtually parallel to those in the present case: Rosenberg signed a Form U-4 which contained an arbitration clause. This clause did not list the types of disputes covered, but incorporated the "rules, constitutions and by-laws" of the New York Stock Exchange (NYSE). The NYSE rules required arbitration in claims arising out of employment or termination of employment. The

Form U-4 also contained a provision signed by an agent of Merrill Lynch certifying that Rosenberg was familiar with the NYSE rules. Rosenberg was never supplied with a copy of the NYSE rules or informed of its contents.

The First Circuit applied the "appropriate" standard based on the operative language contained in the 1991 CRA: "...where **appropriate** and to the extent authorized by law,...arbitration...is encouraged to resolve disputes arising under [these laws]." (Emphasis added). The First Circuit stated that the employer certification provision on the Form U-4 "explicitly contemplated that Merrill Lynch would take the steps necessary to ensure that Rosenberg was aware of the NYSE rules." *Rosenberg* at 20. Therefore, applying the "appropriate" standard, the Court concluded that Rosenberg could not be compelled to arbitrate her claims when Merrill Lynch had failed to provide her with a copy of or otherwise familiarize her with the NYSE rules. *Id.* At 21.

The material facts in the present case mirror those of *Rosenberg*. Petitioner signed a Form U-4 which contained an arbitration provision that incorporated the rules, constitutions and by-laws of NASD. The NASD code, quite similar to the NYSE rules in *Rosenberg*, requires arbitration of disputes arising out of employment or termination of employment. Further, the Form U-4 contained the same employer certification provision as the Form U-4 agreement in *Rosenberg*. Petitioner, as in *Rosenberg*, never received a copy of or was familiarized with the NASD code which describe the types of disputes he would be required to arbitrate.

As stated above, the "appropriate" standard most accurately reflects congressional intent legislative history in regard to compelled arbitration claims pursuant to the 1991 CRA and ADEA. The First Circuit correctly applied the

"appropriate" standard in a compelled arbitration complaint in *Rosenberg*. Petitioner's claim mirrors that of the complainant in *Rosenberg*. By not following the First Circuit's ruling or applying the "appropriate" standard, the Court of Appeals below committed error.

D. The Court of Appeals erroneously applied common-law principles of contract where congressional intent and legislative history required otherwise, and where the language of the Form U-4 was ambiguous.

Respondent cites two provisions in the Form U-4 that it argues should have put Petitioner on notice of his obligation to arbitrate any and all of his claims. However, the Form U-4 also contains an "employer certification" clause, signed by an agent of Respondent, which states in part:

> "**To the best of my knowledge and belief**, the applicant is currently bonded where required, and, at the time of approval, **will be familiar with the statute(s), constitution(s), rules and by-laws of the agency, jurisdiction or self-regulatory organization with which this application is being filed**, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein."

The Court of Appeals below relied on "long-standing principles of contract" in ruling that the Petitioner's signed acknowledgments "informed him that he would be bound by the NASD rules requiring him to arbitrate his claims arising out of termination of his employment..." See Court of Appeals opinion, p. 20. (Appendix A, 25a). However, in so

ruling the court failed to reconcile Petitioner's acknowledgment with the "employer certification," supra, or to address the ambiguity created by the two clauses as to whose responsibility it was to retrieve the NASD code. It is a fundamental rule on the interpretation of contracts that ambiguous language must be construed against the interests of the party that drafted it. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995) (stating "[t]he reason for this rule is to protect the party who did not choose the language from an unintended or unfair result.").

In applying the "long-standing principles of contract," the Court of Appeals failed to consider congressional intent and legislative history on the issue, and failed to decide the above-stated ambiguity. In so doing, the court committed error.

E. The Court of Appeals erroneously enforced the arbitration agreement in this case since Petitioner was represented by a labor union and since compelling arbitration would interfere with and foster tensions with collective rights.

In the within case, Petitioner was a member of the United Food and Commercial Workers International Union, which union was recognized by the employer to the extent required by the National Labor Relations Act as the exclusive representative for the purpose of collective bargaining with respect to wages, hours of employment, and other conditions of employment. This Court has held in *Alexander v. Gardner Denver Company*, 415 U.S. 36 (1974) that a union member could bring a Title VII suit in court even though his discharge had already been arbitrated under a collective bargaining

agreement. The collective bargaining agreement in this case does not by its terms authorize arbitrations to decide federal statutory claims. The Court of Appeals decision seized upon language contained in the Form U-4 application and Amendments which are not even referred to in the collective bargaining agreement, to mandate arbitration. Thus, compelled arbitration in a case such as this interferes with federal labor policy and collective rights.

CONCLUSION

For reasons set forth in this Petition for Writ of Certiorari, Petitioner Haskins respectfully requests that a writ issue as prayed for in order to review the aforementioned Sixth Circuit Opinion set forth in Appendix A.

Respectfully Submitted,

WASSERMAN, BRYAN, LANDRY& HONOLD, LLP

/s/_____

Francis J. Landry
300 Inns of Court Building
405 North Huron Street
Toledo, OH 43604
(419) 243-1239

Counsel for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed August 28, 2000]

No. 99-3486

ROBERT L. HASKINS, SR., *Plaintiff-Appellee,*

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, a/k/a The Prudential Insurance and Financial Services, *Defendant-Appellant.*

Appeal from the United States District Court for the Northern District of Ohio at Toledo No. 98-07711–James G. Carr, District Judge.

Argued: March 8, 2000

Decided and Filed: Aug. 28, 2000.

Before: BOGGS and COLE, Circuit Judges, ZATKOFF*, Chief District Judge.

ZATKOFF, D. J., delivered the opinion of the court, in which BOGGS, J., joined. COLE, J., delivered a separate dissenting opinion.

OPINION

LAWRENCE P. ZATKOFF, Chief District Judge. Plaintiff-Appellant Robert L. Haskins ("Haskins") brought this action against his former employer, Defendant-Appellant Prudential Insurance Company of America ("Prudential"). In his complaint, Haskins alleged that he was unlawfully terminated because of his age and race. In response to the complaint, Prudential filed a motion to dismiss Haskins' complaint and compel arbitration, which the district court denied. For the reasons that follow, we **REVERSE** the judgment of the district court.

I. BACKGROUND

Haskins is a fifty-six year-old African-American who was employed by Prudential from 1980 until June 12, 1997. Haskins claims that on this date, he was unlawfully terminated because of his age and race. During his employment with Prudential, Haskins was represented by the United Food and Commercial Worker's International Union. Through the

---

* The Honorable Lawrence P. Zatkoff, Chief United States District Judge for the Eastern District of Michigan, sitting by designation.

Commercial Worker's International Union. Through the course of his employment with Prudential, Haskins sold instruments registered with the Securities and Exchange Commission and his selling activities were regulated by the National Association of Securities Dealers ("NASD"). Pursuant to NASD requirements and as a condition of continued employment with Prudential, on June 17, 1983, Haskins executed a Uniform Application for Securities Industry Registration or Transfer, which is commonly known as a U-4 Form. The U-4 Form contained the following provision concerning arbitration:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which I register, as indicated in Question 8.

This clause did not specifically delineate the types of claims subject to arbitration. However, Question 8 on the U-4 Form, which is referred to in the above-quoted arbitration provision, asked Haskins to state the securities organizations with which he planned to register. In response to this question, Haskins indicated he planned to register with the NASD. One of the rules in the NASD Code stated that the following matters shall be arbitrated:

> [A]ny dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of

> employment of associated person(s) with any member. . . .

NASD Manual, Code of Arbitration Procedure Rule 10101.[1]

The U-4 Form signed by Haskins also contains two acknowledgments that he understood the contents of the U-4 Form. The first acknowledgment states: "I hereby certify that I have read and understand the foregoing statements and that my responses are true and complete to the best of my knowledge." The second acknowledgment reads as follows:

> I hereby apply for registration with the organizations and states indicated in Question 8 and, in consideration of such organizations and states receiving and considering my application, I submit myself to the jurisdiction of such states and organizations and hereby certify that I have read, understand and agree to abide by, comply with, and adhere to all the provisions, conditions and covenants of the

---

[1] Subsequent to Haskins filing suit in this case, the NASD amended its rules. As of January 1, 1999, "statutory employment-related discrimination claims are arbitrable if the parties agree to arbitration after the dispute has been raised, but, absent such agreement, arbitration is not compulsory." *Koveleskie v. SBC Capital Markets, Inc.*, 167 F.3d 361, 363 n. 1 (7th Cir. 1999), *cert. denied*, 120 S.Ct. 44 (1999) (citing SEC Rel. No. 34-40109, 63 Fed.Reg. 35299). However, because Haskins' complaint was filed prior to January 1, 1999, this amendment is not applicable to his case. *See id.; Hart v. Canadian Imperial Bank of Commerce, CIBC, Inc.*, 43 F.Supp.2d 395, 399 (S.D.N.Y.1999).

> statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the states and organizations as they are and may be adopted, changed or amended from time to time. . . .

Haskins' signature appears in the space provided under these acknowledgments. Finally, another provision in the U-4 Form was the employer certification, which stated:

> To the best of my knowledge and belief, the applicant is currently bonded where required, and, at the time of approval, will be familiar with the statute(s), constitution(s), rules and by-laws of the agency, jurisdiction or self-regulatory organization with which this application is being filed, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein.

Prudential's branch office manager signed under this provision in the U-4 Form.

On December 4, 1998, Haskins filed a complaint against Prudential, alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, as well as other claims. Soon after Haskins filed his complaint, Prudential filed a motion to dismiss the complaint and compel arbitration. Prudential argued that Haskins had agreed to arbitrate the claims presented in his lawsuit and therefore arbitration should be compelled. Haskins countered

that he should not be compelled to arbitrate his claims against Prudential because he was never provided with a copy of the NASD Code, no agent of Prudential ever familiarized him with the NASD Code, and the certification of Prudential's branch manager was untrue. Haskins also argued that compelling arbitration would interfere with his collective bargaining rights.

In its opinion, the district court first decided that compelling arbitration would not interfere with Haskins' collective bargaining rights.[2] Second, the district court pointed out that Haskins did not discuss the arbitration clause with any of Prudential's agents and that he did not receive a copy of the NASD Code. Because Haskins did not discuss the arbitration clause with one of Prudential's agents, nor did he

---

[2] Before the district court and on appeal, Haskins argues that compelling arbitration "would interfere with and foster tensions" with his collective bargaining rights. However, the U-4 Form signed by Haskins is not an agreement between him and Prudential. Instead, it is a contract with the securities exchanges. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 n. 2 (1991). In denying Haskins' claim, the district court relied upon *O'Donnell v. First Investors Corp.*, 872 F.Supp. 1274, 1277 (S.D.N.Y.1995), which held that "[t]he U-4 . . . is not a contract with [the employer] but rather an application to qualify with various security exchanges. The U-4 is a separate contract, and as long as this contract is effective, the terms of the agreement must be followed, regardless of the fate of a separate, though related, agreement." The court agrees with the findings of the district court on this issue and concludes that the U-4 Form signed by Haskins is an agreement between him and the NASD and therefore remains in effect even though Haskins has entered into a separate collective bargaining agreement.

receive a copy of the NASD rules, the district court concluded that Haskins "was not aware of the statutory and state rights he surrendered by filling out Question 8 and signing the U-4 Form."

The district court then denied Prudential's motion, relying upon *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1 (1st Cir.1999), in which the First Circuit found that under the circumstances before it, compelling arbitration was not "appropriate" under the 1991 Civil Rights Act. The district court employed the standard set forth in *Rosenberg* and found that compelling arbitration would not be "appropriate," stating:

> As in *Rosenberg*, plaintiff signed a U-4 Form containing an Arbitration Clause which did not list the types of disputes covered, instead incorporating the rules, constitutions, and by-laws of NASD. The NASD Code, like the [New York Stock Exchange] Rules in *Rosenberg*, requires arbitration of controversies arising out of employment or termination of employment. The U- 4 Form also contains the same Employer Certification provision as the U-4 agreement in *Rosenberg*. Like the plaintiff in *Rosenberg*, [Haskins] did not receive a copy of the NASD Code and no agent of [Prudential] discussed the arbitration clause with him.
>
> The Employer Certification, as in *Rosenberg*, contemplates steps by [Prudential] which were not taken. Therefore, [Haskins]

> successfully argues that the arbitration agreement is not "appropriate" under Title VII and the ADEA.

Subsequent to the district court's decision, Prudential filed a motion for interlocutory appeal. This motion was granted in part and denied in part by this court. Although discovery was allowed to continue, this court ordered that no dates for pretrial motions or trial should be scheduled. This appeal followed.

II. STANDARD OF REVIEW

A district court's determination as to whether a dispute is arbitrable is subject to *de novo* review. *See E.E.O.C. v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 454 (6th Cir. 1999) (citing *M & C Corp. v. Erwin Behr GmbH & Co., KG*, 143 F.3d 1033, 1037 (6th Cir. 1998)). Further, the court is mindful that in passing the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 *et seq.*, Congress' "preeminent concern" was to enforce private agreements to arbitrate. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Finally, in deciding this matter, the court considered that there is "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983).

III. LEGAL STANDARDS

The main issue to be decided in this case is whether Haskins should be compelled to arbitrate his claims even though the U-4 Form did not specifically delineate the claims

subject to arbitration and Prudential did not provide Haskins with a copy of the NASD rules pertaining to arbitration. In signing the U-4 Form, Haskins agreed to "arbitrate any dispute, claim or controversy that may arise between" himself and his firm "that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which [Haskins] register[ed]." Prudential seeks to hold Haskins to this agreement. Haskins argues that since he never received a copy of the NASD Code, nor did any of Prudential's agents discuss the arbitration clause with him, he should not be required to arbitrate his claims against Prudential.

This is an issue of first impression before this court. Although several courts have adjudicated matters involving facts almost identical to those presented here, they have done so in three different ways. The Ninth Circuit has concluded that "a Title VII plaintiff may only be forced to forego her statutory remedies and arbitrate her claims if she has knowingly agreed to submit such disputes to arbitration." *Prudential Insurance Co. of America v. Lai*, 42 F.3d 1299, 1305 (9th Cir.1994), *cert. denied*, 516 U.S. 812 (1995) (emphasis added). The First Circuit has concluded as the district court did in this case, finding that arbitration may only be compelled in appropriate cases. *See Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1, 20 (1st Cir. 1999). Finally, a district court in this Circuit has held that "a party is generally chargeable with knowledge of the existence and scope of an arbitration clause within a document signed by that party, in the absence of fraud, deception, or other misconduct that would excuse the lack of such knowledge." *Beauchamp v. Great West Life Assurance Co.*, 918 F.Supp. 1091, 1098 (E.D.Mich. 1996). The following discussion will examine each of the three standards set forth above.

A. Lai's "Knowing" Standard

In *Prudential Insurance Co. of America v. Lai*, 42 F.3d 1299 (9th Cir. 1994), the Ninth Circuit was confronted with a factual situation similar to the present case. The plaintiffs in that case were employed as sales representatives by the defendant. The plaintiffs had signed U-4 Forms requiring that they "arbitrate any dispute, claim or controversy that . . . is required to be arbitrated under the rules, constitutions, or bylaws of the organizations with which [the plaintiffs] register[ed]." The plaintiffs later registered with the NASD, which required "that disputes 'arising in connection with the business' of its members be arbitrated." The plaintiffs claimed that when they signed the U-4 Forms, "[a]rbitration was never mentioned, and plaintiffs were never given a copy of the NASD Manual, which contain[ed] the actual terms of the arbitration agreement." The plaintiffs sued the defendant, claiming that they had been sexually harassed by their immediate supervisor. The defendants filed a motion to compel arbitration, which was granted by the district court. *Id.* at 1301.

On appeal, the plaintiffs argued that they should not be compelled to arbitrate their claims because they did not knowingly agree to arbitrate them. The Ninth Circuit agreed and reversed the district court, holding:

> Congress intended there to be at least a knowing agreement to arbitrate employment disputes before an employee may be deemed to have waived the comprehensive statutory rights, remedies and procedural protections prescribed in Title VII and related state

> statutes. Such congressional intent, which has been noted in other judicial decisions, is apparent from the text and legislative history of Title VII.

Id. at 1304.

In reaching this holding, the Ninth Circuit looked to the history of the Civil Rights Act of 1991, noting that "[s]ection 118 of that Act states: 'Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolutions including . . . arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.' " *Lai*, 42 F.3d at 1304 (quoting § 118 of Pub.L. 102-166, set forth in the notes following 42 U.S.C. § 1981 (Supp.1994)). The court also noted that the goal was to increase the number of remedies available to plaintiffs in civil rights cases:

> Section 216 [of the 1991 Act] encourages the use of alternative means of dispute resolution . . . where appropriate and to the extent authorized by law. . . . The committee emphasizes . . . that the use of alternative dispute resolution mechanisms is intended to supplement, not supplant, the remedies provided by Title VII. Thus, for example, the committee believes that any agreement to submit disputed issues to arbitration, whether in the context of a collective bargaining agreement or in an employment contract, does not preclude the affected person from seeking relief under the enforcement provisions of

> Title VII. This view is consistent with the Supreme Court's interpretation of Title VII in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974). The committee does not intend for the inclusion of this section to be used to preclude rights and remedies that would otherwise be available.

Lai, 42 F.3d at 1304 (quoting H.R. Rep. No. 40(I), 102nd Cong. 1st Sess., reprinted in 1991 U.S.C.C.A.N. 549, 635). The Ninth Circuit also referred to Senator Dole's comments on § 118, in which he said that this section encouraged arbitration only when "the parties knowingly and voluntarily elect to use these methods." *Lai*, 42 F.3d at 1304 (quoting 137 Cong. Rec. S. 15472, S. 15478 (daily ed. Oct. 30, 1991, statement of Sen. Dole)).

Finding that the plaintiffs could be compelled to arbitrate their claims if they "knowingly" agreed to arbitrate, the Ninth Circuit concluded:

> Th[e] congressional concern that Title VII disputes be arbitrated only "where appropriate," and only when such a procedure was knowingly accepted, reflects our public policy of protecting victims of sexual discrimination and harassment through the provisions of Title VII and analogous state statutes. This is a policy that is at least as strong as our public policy in favor of arbitration. Although the Supreme Court has pointed out that plaintiffs who arbitrate their statutory claims do not "forego the substantive

> rights afforded by the statute," the remedies and procedural protections available in the arbitral forum can differ significantly from those contemplated by the legislature. In the sexual harassment context, these procedural protections may be particularly significant. *Thus, we conclude that a Title VII plaintiff may only be forced to forego her statutory remedies and arbitrate her claims if she has knowingly agreed to submit such disputes to arbitration.*

Lai, 42 F.3d at 1305 (footnote and citations omitted) (emphasis added). Applying this standard to the case before it, the Ninth Circuit concluded that the plaintiffs "were not bound by any valid agreement to arbitrate these employment disputes, because they did not knowingly contract to forego their statutory remedies in favor of arbitration." *Id.*

B. Rosenberg's "Appropriate Standard"

In *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1 (1st Cir.1999), the First Circuit was also confronted with a factual situation nearly identical to the present case. The plaintiff was hired by the defendant as a financial consultant. As part of the application process, the plaintiff was required to fill out a U-4 Form which contained the following language under the heading "THE APPLICANT MUST READ THE FOLLOWING VERY CAREFULLY":

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules,

> constitutions, or by-laws of the organizations indicated in Item 10 as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction.

Rosenberg, 170 F.3d at 4. Under Item 10, the plaintiff noted the various securities organizations with which she intended to register, which included the NASD and the NYSE. In the U-4 Form, the plaintiff's supervisor certified that the plaintiff would be familiar with the applicable rules by the time her U-4 Form was approved. The NYSE rules provided that the plaintiff agreed to arbitrate any dispute arising out of her employment or termination of her employment. However, the certification was untrue, as the plaintiff was not provided with any rules of the NYSE or the NASD. After working for the defendant for two years, the plaintiff was terminated. Subsequent to her termination, the plaintiff filed a discrimination claim against the defendant. The defendant filed a motion to compel arbitration with the district court, which was denied, so the defendant appealed the district court's decision. *See id.* at 4-7.

Initially, the First Circuit reviewed the "knowing" standard set forth in *Lai* and stated that there was a dispute between circuits as to whether this standard should apply.[3]

---

[3] In *Rosenberg*, the First Circuit explained that there is a split amongst the circuits as to whether an employee is entitled to a "heightened level of protection" when determining whether the employee has waived his rights to a judicial forum in favor of arbitration. The First Circuit found that the Supreme Court had not

Instead of determining whether a "knowing" standard should apply, the court looked to the language of the 1991 Civil Rights Act (CRA). The court noted that the "knowing and voluntary language" relied upon by *Lai* was nowhere in the language of the CRA. Instead, the First Circuit relied upon the following language in the CRA: "[w]here *appropriate* and to the extent authorized by law, . . . arbitration . . . is encouraged to resolve disputes arising under [these laws]." *Rosenberg*, 170 F.3d at 18-19 (quoting 1991 Civil Rights Act § 118, 105 Stat. at 1081) (emphasis added).

After reviewing the facts of the case, the First Circuit concluded that compelling arbitration in the case would be "inappropriate," because:

> [the defendant] never provided [the plaintiff] with a copy of the rules and [the defendant] has provided no evidence it made [the plaintiff] familiar with the rules as to arbitration. [The defendant's] failure runs afoul of the mutual understandings. Since the arbitration requirement stems from the NYSE Rules and

---

directly addressed the issue, the Ninth Circuit had adopted a "knowing" standard, the Third and Eighth Circuits had rejected a heightened standard, and the Seventh Circuit recognized the issue but found it unnecessary to address it. *See Rosenberg*, 170 F.3d at 18 (citing *Renteria v. Prudential Ins. Co. of America*, 113 F.3d 1104, 1105-06 (9th Cir. 1997); *Lai*, 42 F.3d at 1305; *Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 183-84 & n. 2 (3rd Cir. 1998), *cert. denied*, 525 U.S. 1139 (1999); *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 838 (8th Cir. 1997); *Gibson v. Neighborhood Health Clinics, Inc.*, 121 F.3d 1126, 1130 (7th Cir. 1997)).

> the U-4 Form requires that the employee be "familiar with" the rules and thus with the requirement for arbitration of employment claims, we think that [the defendant's] inaction undercuts the imposition of an arbitration requirement. The NYSE rules contemplated that [the defendant] certify to it that, at least as of the time of NYSE approval of [the plaintiff's] application, [the plaintiff] be "familiar" with the rules including the rules that all employment disputes be arbitrated. [The defendant's] failure [to make the plaintiff familiar with the rules], we believe, makes it *inappropriate* to enforce the provision.

Rosenberg, 170 F.3d at 20 (citation omitted) (emphasis added).

Because the defendant failed to make information concerning arbitration available to the plaintiff, the court concluded that the district court correctly denied the defendant's motion to compel arbitration. However, the court did find that if the defendant had "taken the modest effort required to make relevant information regarding the arbitrability of employment disputes available to [the plaintiff] as it committed itself to do, it would have been able to compel [the plaintiff] to arbitration." *Rosenberg*, 170 F.3d at 21.

C. Beauchamp's Contract Law Standard

In *Beauchamp v. Great West Life Assurance Co.*, 918 F.Supp. 1091 (E.D.Mich.1996), the district court dealt with a similar fact pattern. The plaintiff signed a U-4 Form which

stated that she "agree[d] to arbitrate any dispute, claim, or controversy . . . that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which [the plaintiff] register[ed]." The plaintiff subsequently registered with the NASD. As explained by the district court, "Part I of the NASD Code of Arbitration Procedure states that the code was created 'for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association. . . .' " Further, the NASD code required arbitration of any disputes between members in connection with the business of the members. Although the plaintiff remembered that she was required to sign a U-4 Form as a condition of her employment, she did not remember reading the above-quoted language from the U-4 Form. *See Beauchamp,* 918 F.Supp. at 1093-94.

After bringing a complaint with the EEOC, the plaintiff brought suit against the defendant. The plaintiff alleged that she was repeatedly passed over for promotions due to her age and gender. In response to the plaintiff's complaint, the defendant filed a Motion to Compel Arbitration. *See id.*

Before the district court, the plaintiff relied upon *Lai's* "knowingly" standard, arguing that for the arbitration clause in the U-4 Form to be applicable, she must have been informed about the arbitration clause and its applicability to her case. *See Beauchamp*, 918 F.Supp. at 1095. The district court rejected the Ninth Circuit's holding in *Lai*, stating:

> Fortunately, [*Lai*] is not binding precedent because this court is not persuaded by its reasoning. The portions of the legislative

> history relied upon by the Ninth Circuit are slender reeds upon which to rest the weighty and novel conclusion that an arbitration clause is only binding when the claimant has actual knowledge that his particular employment discrimination claims will be covered by the agreement. This conclusion flies in the face of the language of the Civil Rights Act of 1991, the Supreme Court's opinion in *Gilmer*, and fundamental principles of contract law.

Beauchamp, 918 F.Supp. at 1096. The district court then proceeded to dismantle the Ninth Circuit's opinion in *Lai*. The district court discussed a major problem with the Ninth Circuit's holding:

> [T]he Ninth Circuit's opinion fails to consider that Congress would be unlikely to turn a venerable rule of contract law on its ear without an express statement that it was doing so.
>
> > It is well settled that the failure of a party to obtain an explanation of a contract is ordinary negligence. Accordingly, this estops the party from avoiding the contract on the ground that the party was ignorant of the contract provisions. . . . The stability of written instruments demands that a person who executes one shall know its contents or be chargeable with such knowledge . . . in the absence of

> circumstances fairly excusing his failure to inform himself.
>
> The Ninth Circuit's rule that a party to an arbitration agreement is not chargeable with knowledge concerning the existence and scope of that agreement with respect to Title VII claims is directly contrary to this well-settled rule of contract law.

Beauchamp, 918 F.Supp. at 1097-98 (citations omitted). *See also Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 184 (3rd Cir. 1998) (holding that "[n]othing short of a showing of fraud, duress, mistake or some other ground recognized by the law applicable to contracts generally would have excused the district court from enforcing Seus' agreement [to arbitrate]").

Finally, the court in *Beauchamp* concluded:

> Accordingly, this court chooses not to treat [*Lai*] as persuasive precedent, instead holding, consistently with *Gilmer*, that a party is generally chargeable with knowledge of the existence and scope of an arbitration clause within a document signed by that party, in the absence of fraud, deception, or other misconduct that would excuse the lack of such knowledge.

Beauchamp, 918 F.Supp. at 1098.

IV. ANALYSIS

After reviewing each of the three rulings in which courts have examined the issue presently before this court, we adopt the standard announced in ***Beauchamp*** and find that absent a showing of fraud, duress, mistake, or some other ground upon which a contract may be voided, a court must enforce a contractual agreement to arbitrate. The court finds that adoption of the standard announced in ***Beauchamp*** is superior to the standards set forth in *Rosenberg* and *Lai* because it does not plainly ignore long-standing rules of contract law.

Were the court to adopt the rationale set forth in either *Rosenberg* or *Lai*, it would in effect hold that a party to a contract is not chargeable with the knowledge of the terms contained in the contract. Further, adopting either *Rosenberg* or *Lai* would serve to release a party from his obligations under a contract with absolutely no basis in contract law. The court is not prepared to abandon the long-standing principles of contract law, such as:

> [O]ne who accepts a written contract is conclusively presumed to know its contents and to assent to them, in the absence of fraud, misrepresentation, or other wrongful act by another contracting party. Thus, ignorance of the contents of a contract expressed in a written instrument does not ordinarily affect the liability of one who signs it or who accepts it otherwise than by signing it.

17A Am.Jur.2d Contracts § 224 (1991).

Further, as to the Ninth Circuit's decision in *Lai*, it has been rejected by nearly every court that has had an opportunity to pass upon it. *See Seus v. John Nuveen & Co., Inc.*, 146 F.3d 175, 183 n. 2 (3rd Cir.1998) ("respectfully disagree[ing] with the decision of the court in *Lai* "); *see also Hart v. Canadian Imperial Bank of Commerce, CIBC, Inc.*, 43 F.Supp. 2d 395, 400 (S.D.N.Y. 1999) (rejecting the "heightened standard" announced in *Lai*); *Battle v. Prudential Ins. Co. of America*, 973 F.Supp. 861, 866 (D.Minn.1997) ("This Court is . . . not persuaded that the court's analysis in *Lai* is sound and supported by law and declines to following its reasoning as well."); *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 957 F.Supp. 1460, 1474 (N.D. Ill. 1997) (finding the decision in *Lai* "inconsistent" with the Supreme Court's decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991)); *Johnson v. Hubbard Broadcasting, Inc.*, 940 F.Supp. 1447, 1455 (D.Minn.1996) (finding the logic in *Lai* "unconvincing" and noting that the decision had received "widespread criticism"); *Beauchamp*, 918 F.Supp. at 1096 (*see* discussion, *supra*, IV.C.); *Maye v. Smith Barney Inc.*, 897 F.Supp. 100, 107 (S.D.N.Y. 1995) (noting that *Lai's* reasoning "has been criticized by courts in this and other Circuits as contrary to Supreme Court precedent and as based on citation of inadequate legislative history").

As to the decision in *Rosenberg*, it is a more recent decision than *Lai*, and consequently, fewer courts have had an opportunity to pass upon the decision. Nonetheless, we respectfully disagree with the decision reached by the First Circuit in that case. Initially, the court noted that "[h]ad the U-4 provided for arbitration of all disputes, or given explicit notice that employment disputes were subject to arbitration,"

then it would have compelled arbitration. *See Rosenberg*, 170 F.3d at 18. However, such a statement gives no weight to the language in the U-4 Form, which in *Rosenberg* and in the present case clearly and plainly provides for arbitration. As noted during the discussion of the facts in the present case, the U-4 Form which was signed by Haskins contains two acknowledgments that he understood the contents of the U-4 Form. The simple fact that the arbitration provision in the U-4 Form did not provide for arbitration of "all disputes" or "employment disputes" should not prevent arbitration.

The court in *Rosenberg* also placed great emphasis on the fact that the plaintiff in that case was never provided with a copy of the NYSE rules, which provided for arbitration of the claims she had raised. *See Rosenberg*, 170 F.3d at 6, 20. The court stated:

> [The] arbitration agreement did not by itself define the range of claims subject to arbitration, even though [the defendant] expressly represented that [the plaintiff] would be advised of the rules. It referred only to arbitration of such claims as were required to be arbitrated by the NYSE rules. But those rules were not given to [the plaintiff] or described to her. The question then becomes which party should bear the risk of her ignorance. Given Congress's concern that agreements to arbitrate employment discrimination claims should be enforced only where "appropriate," a concern not expressed in the FAA or at common law, [the defendant] should, we believe, bear that risk.

Id. at 19 (footnotes omitted). However, we again believe that this overlooks the fact that the U-4 Form provided to both the plaintiff in *Rosenberg* and, in this case, to Haskins, clearly requires that certain claims shall be subject to arbitration. The dissent in *Rosenberg* succinctly summarizes our thoughts on this point:

> I would hold that [the plaintiff] was presumed to understand, and to be bound by, the plain terms of her U-4 agreement even if she were not furnished copies of the exchange rules at the time of signing. I believe the agreement was broad and plain and that it put [the plaintiff] on notice that she agreed to arbitrate at the outset "any dispute, claim or controversy" with [the defendant] under exchange rules. If she "did not make herself aware of the existence or scope of [the arbitration] clause [in the U-4 agreement], she did so at her own peril." She is "presumed to know the contents of the signed agreement" as well as its reasonable import.

Id. at 23 (Wellford, J., dissenting) (footnote and citations omitted). *See also Ludwig v. Equitable Life Assurance Society of the U.S.*, 978 F.Supp. 1379, 1382 (D.Kan. 1997) ("regardless of whether plaintiff received the NASD Code, the potential breadth of the arbitration provision immediately put her on notice that any and all employment disputes were subject to mandatory arbitration"); *Herko v. Metropolitan Life Ins. Co.*, 978 F.Supp. 141, 147 (W.D.N.Y. 1997) (because there were no allegations of any wrongdoing in execution of the U-4 Form, the plaintiff's claims must be arbitrated

because she "is conclusively presumed to have known that disputes between [herself] and her employer would be subject to arbitration" despite the fact that she was not provided with the NASD rules).

Finally, the dissent in *Rosenberg* discussed the term "appropriate," which the First Circuit used as its standard when deciding whether arbitration should be compelled. Judge Wellford wrote: "Congress, in using the expression '[w]here [arbitration is] appropriate' may well have intended some threshold determination that the type of employee-employer dispute be amenable to resolution by arbitration." *Rosenberg*, 170 F.3d at 22 (Wellford, J., dissenting). Judge Wellford's point is well-taken. It is not clear how Congress intended the term "appropriate" to apply in arbitration cases. Consequently, this court finds that it would be unwise to require a heightened standard that arbitration be "appropriate" without a clear Congressional requirement to do so, especially in light of the strong federal policy favoring arbitration.

In sum, we disagree with the decision in *Rosenberg* to hold the employer completely at fault for failing to provide an employee with a copy of the applicable exchange organization's rules when the arbitration provision in the U-4 Form was plain and broad, such that a signing party should have been on notice that his claims could have been subject to arbitration. Such a decision removes all responsibility from a party signing a U-4 Form to read and understand the agreement. We cannot endorse such a rule.

Returning to the present case, Haskins signed the U-4 Form. However, he claims that since he never received a copy of the NASD rules, he was never informed of the rights

he would surrender by agreeing to arbitrate and therefore should not be required to arbitrate his claims. However, ignorance as to the terms of the U-4 Form is no defense. Because Haskins signed the U-4 Form, which informed him that he would be bound by the NASD rules requiring him to arbitrate his claims arising out of termination of his employment, and because there has been no showing of fraud, duress, mistake, or some other ground upon which a contract may be voided, Haskins is required to arbitrate his claims.

V. CONCLUSION

For the above-stated reasons, the district court erred in denying Prudential's motion to compel arbitration. The decision of the district court is **REVERSED** and the matter is **REMANDED** to the district court for entry of an order dismissing the case and compelling arbitration.

DISSENT

R. GUY COLE, JR., Circuit Judge, dissenting. On the merits of Haskins's argument, I believe that the proper analysis of this case is found in the First Circuit's opinion in *Rosenberg v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1 (1st Cir. 1999), and that requiring compulsory arbitration of Haskins's civil rights claims is not "appropriate," within the meaning of the Civil Rights Act of 1991 ("CRA"). As in *Rosenberg*, "[t]he agreement did not state that [the plaintiff] agreed to arbitrate all disputes, or even any dispute. The agreement only required [the plaintiff] to arbitrate any dispute that the [registering organization's] rules, constitution, or bylaws . . . required to be arbitrated." *Rosenberg*, 170 F.3d at 18. The U-4 agreement was signed

by Haskins. The U-4 was also signed by a Prudential representative who attested that Haskins was familiar with the rules of the organization referred to in the U-4 agreement. In fact, Haskins was neither given a copy of these rules, nor were these rules explained to him. This lack of an informed waiver of his judicial forum for a civil rights claim, coupled with the allegedly false attestation by Prudential's representative, lead me to believe that this narrow situation is one in which enforcement of a compelled arbitration clause waiving Haskins's judicial forum for his employment discrimination claim is inappropriate under the CRA.

In addition, I believe the majority's analysis makes two critical missteps. First, the majority's contract law analysis--which it states is the holding of its opinion--is consistent with *Rosenberg*. The majority states that it adopts the contract law holding contained in *Beauchamp v. Great West Life Assurance Co.*, 918 F.Supp. 1091 (E.D.Mich. 1996). In *Beauchamp*, the plaintiff, who alleged "merely that she [did] not remember reading [the U-4] language," 918 F.Supp. at 1098-99, argued that she had to "knowingly relinquish her rights to a judicial forum for employment discrimination claims when she signed the U-4 form," *id.* at 1095; an admittedly high standard which the *Rosenberg* court declined to adopt as well. Further, in *Rosenberg*, the court rejected the plaintiff's argument that the arbitration agreement was an unenforceable contract of adhesion or that the facts alleged supported other relief under contract law doctrines such as fraud or oppressive conduct. *See Rosenberg*, 170 F.3d at 17. Nor do the two Michigan state cases cited within *Beauchamp-Scholz v. Montgomery Ward & Co.*, 468 N.W.2d 845 (Mich.1991) and *Sponseller v. Kimball*, 224 N.W. 359 (Mich.1929) -- provide more support for the majority's

analysis of Haskins's case.[1] In both of those cases, had the plaintiffs read the documents provided to them, they would have clearly been informed of the facts that they protested in their suit. For example, in *Scholz*, the case of more recent vintage, the Michigan Supreme Court rejected the argument of a plaintiff, who was fired for her refusal to work on Sundays, that she be able to enforce a prior oral agreement not to work on Sundays, even after she signed a subsequent written agreement that she was an at-will employee. *See Scholz*, 468 N.W.2d at 846. Haskins, however, received no like opportunity to inform himself of the claims which were to be subjected to compelled arbitration. *See Rosenberg*, 170 F.3d at 18 ("Had the U-4 provided for arbitration of all disputes, or given explicit notice that employment disputes were subject to arbitration, we would have had little difficulty in finding that Rosenberg had agreed to arbitrate her employment discrimination claims within the meaning of the 1991 CRA.").

---

[1] Under the FAA, we are to "apply ordinary state-law principles that govern the formation of contracts." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). State law resolves questions "concerning the validity, revocability, or enforceability of contracts generally" *Perry v. Thomas*, 482 U.S. 483, 492 n. 9 (1987), and works together with the "body of federal substantive law of arbitrability" created by the FAA. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Cases under the FAA do not clearly require us to employ the contract law principles of the state in which the contract or claim arose--in Haskins's case, Ohio--but if I were to undertake a contract analysis in this case, I would also use Ohio state law. *See, e.g., First Options*, 514 U.S. at 944 (applying the law of the state, Illinois, in which the case arose).

Second, the majority's opinion reads the "appropriate" language of the CRA to be superfluous; a clearly disfavored method of statutory interpretation. "Judges should hesitate . . . to treat [as surplusage] statutory terms in any setting. . . ." *Ratzlaf v. United States*, 510 U.S. 135, 140-141 (1994); *see also United States v. Alaska*, 521 U.S. 1, 59 (1997) ("The Court will avoid an interpretation of a statute that 'renders some words altogether redundant.'") (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995)). Congress specifically legislated, in Section 118 of the CRA, that arbitration of civil rights claims is encouraged "[w]here appropriate and to the extent authorized by law." As the *Rosenberg* court noted, "[a]t a minimum the words 'to the extent authorized by law' must mean that arbitration agreements that are unenforceable under the FAA are also unenforceable when applied to claims under Title VII and the ADEA. Under the FAA, arbitration agreements are enforceable 'save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Rosenberg*, 170 F.3d at 19. As to the first part of the CRA clause at issue, the majority states that it declines "to require a heightened standard that arbitration be 'appropriate' without a clear Congressional requirement to do so," and decides the case on contract law grounds.[2] I can think of no clearer signal from

---

[2] To the extent that the majority suggests that the dictates of the FAA, which was enacted in 1947 and was meant to put arbitration agreements generally on the same footing as other contracts, *see, e.g., American Airlines, Inc. v. Louisville & Jefferson County Air Bd.*, 269 F.2d 811, 816 (6th Cir. 1959), trumps language in the CRA, which was enacted in 1991 and specifically addressed agreements to arbitrate civil rights claims, I disagree.

Congress than statutory language coupled with relevant legislative history, *see, e.g.* 137 Cong. Rec. S15,472--78 (daily ed. Oct. 30, 1991) (statement of Sen. Dole) (stating that the arbitration provision encourages arbitration, but "where the parties knowingly and voluntarily elect to use these methods"), to direct the courts to faithfully interpret this provision of the CRA. Further, the Supreme Court has already indicated that the identical statutory language, in a provision of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12212, has meaning. *See Wright v. Universal Maritime Serv. Corp.*, 525 U.S. 70, 82 n. 2 (1998) ("Our conclusion that a union waiver of employee rights to a federal judicial forum for employment discrimination claims must be clear and unmistakable means that, absent a clear waiver, it is not 'appropriate,' within the meaning of this provision of the ADA, to find an agreement to arbitrate.").

> The "classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute." This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand. As we recognized recently in *United States v. Estate of Romani*, "a specific policy embodied in a later federal statute should control our construction of the [earlier] statute, even though it has not been expressly amended."

Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 120 S.Ct. 1291, 1306 (2000) (internal citation omitted).

The majority's opinion instead renders the statutory language meaningless. Reasonable jurists can, and will, dispute whether any particular facts or category of cases are "appropriate" for an agreement to arbitrate; I do not agree, however, that we have the power to "find[] it would be unwise" to apply the statutory language.

Accordingly, I respectfully dissent.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

[Filed August 28, 2000]

No. 99-3486

ROBERT L. HASKINS, SR.,
Plaintiff-Appellee,

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, a/k/a The Prudential Insurance and Financial Services,
Defendant-Appellant.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Toledo

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is REVERSED and the case is REMANDED for entry of an order dismissing the case and compelling arbitration.

ENTERED BY ORDER OF THE COURT

/s/_____
Leonard Green, Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OHIO WESTERN DIVISION

[Filed March 15, 1999]

No. 3:98CV7711

Robert L. Haskins, Sr.,
Plaintiff,

v.

The Prudential Insurance Company of America, a.k.a. Prudential Insurance and Financial Services
Defendant.

ORDER

This is an employment discrimination case in which plaintiff alleges defendant improperly discharged him on the bases of age and race. Specifically, plaintiff claims defendant violated the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991 (Title VII), the Age Discrimination in Employment Act (ADEA), and state law. This court has jurisdiction pursuant to 28 U.S.C. § 1331. Defendant moves for dismissal and to compel arbitration. (Doc. 8). For the following reasons, defendant's motion shall be denied.

Background

Plaintiff is a fifty-six year old black male who was employed by defendant and represented by the United Food and Commercial Worker's International Union (Union). His employment spanned the period from 1980 until his termination on June 12, 1997. Plaintiff's claims arise out of that termination. He alleges that defendant used his mishandling of two cases as a pretext for its decision to terminate his employment on the bases of age and race. Further, plaintiff claims that defendant replaced him with three younger, white males.

As part of his employment, Plaintiff was engaged in the sale of products registered with the Securities and Exchange Commission, and his activities were regulated by the National Association of Security Dealers (NASD). Pursuant to defendant's normal business practices and NASD requirements, plaintiff executed a Uniform Application for Securities Industry Registration or Transfer (U-4 Form) on June 17, 1983.

Plaintiff's U-4 form contains three relevant provisions. The first provision is a clause pertaining to arbitration (Arbitration Clause) which states:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which I register, as indicated in Question 8.

(Doc. 8, Ex. 1, U-4 Form at 4). The Arbitration Clause contains no further elaboration about the types of claims subject to arbitration.

The second provision is contained in a portion of the U-4 Form which was signed by an agent of defendant (Employer Certification). The provision states:

> To the best of my knowledge and belief, the applicant is currently bonded where required, and, at the time of approval will be familiar with the statute(s), constitution(s), rules and bylaws of the agency, jurisdiction or self-regulatory organization with which this application is being filed, and the roles governing registered persons, and will be fully qualified for the position for which application is being made herein.

(Id.)

The third provision is Question 8, referred to in the Arbitration Clause above, which indicates plaintiff's plan to register with NASD. (Id. at 1). Thus, the combination of Question 8 and the Arbitration Clause incorporates separate NASD rules, constitutions, and by-laws, including a section of the NASD Code which provides for

> the arbitration of any dispute, claim or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment

> or termination of employment of associated person(s) with any member.

(Doc. 8, Ex. 2, NASD Code §10101).

Plaintiff never received a copy of the NASD Rules and did not discuss the Arbitration Clause with an agent of defendant. Therefore, plaintiff was not aware of the statutory and state rights he surrendered by filling out Question 8 and signing the U-4 Form.

Discussion

Defendant moves to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6). According to defendant, all plaintiff's claims arise directly out of plaintiff's employment and are the subject of a binding arbitration agreement. Therefore, defendant asserts, the claims should be dismissed and arbitration should be compelled pursuant to the Federal Arbitration Act (FAA), the United States Supreme Court decision in Gilmer v. Interstate/Johnson Lane Corp., 111 S. Ct. 1647 (1991), and subsequent decisions of the Sixth Circuit.

Plaintiff responds with three arguments. First, plaintiff claims that compelled arbitration would interfere with and foster tensions with collective rights secured by the Union. Second, plaintiff claims that the arbitration agreement is unenforceable because defendant failed to provide plaintiff with a copy of the NASD Code. Third, plaintiff claims compelled arbitration of Title VII disputes conflicts with legislative intent.

A. Collective Rights

First, plaintiff claims that compelled arbitration would interfere with and foster tensions with collective rights secured by the Union. According to plaintiff, the collective bargaining agreement (CBA) between defendant and the Union constitutes plaintiff's exclusive employment agreement and is the only document that may govern arbitration. (Doc. 13, Ex. I to Ex. A, CBA, Articles 24-25 at 90-93).

Plaintiff relies on Supreme Court authority which analyzes arbitration in the context of a collective bargaining agreement. See Alexander v. Gardner Denver Company, 415 U.S. 36 (1974). In Gardner Denver, the Court had to accommodate the federal policy favoring arbitration of labor disputes and the federal policy against discriminatory employment practices. See id. at 59. The Court concluded that the two policies could best be accommodated by permitting an employee to pursue remedies under the arbitration clause of the collective bargaining agreement as well as judicial remedies under Title VII. See id. Plaintiff argues that, under Gardner Denver and its progeny, the CBA cannot preclude him from seeking a judicial remedy.

Plaintiff's reliance on Gardner Denver, however, is based on his contention that the CBA, as the exclusive employment agreement between plaintiff and defendant, supersedes the U-4 Form. Thus, plaintiff believes arbitration may only be governed by the CBA and Gardner Denver applies. I disagree.

The U-4 Form is a separate agreement between plaintiff and NASD, not plaintiff and defendant.[1] See Gilmer, 500 U.S. at 25 n.2 (finding that a U-4 agreement was a contract with the securities exchange rather than an agreement with the employer); Willis v. Dean Witter Reynolds. Inc., 948 F.2d 305, 312 (6th Cir. 1991) (citing Gilmer for the proposition that U-4 arbitration agreements are not employment contracts between employee and employer). As such, the U-4 form is not superseded and, if effective, shall be followed notwithstanding the CBA and Gardner Denver. See O'Donnell v. First Investors Corp., 872 F. Supp. 1274, 1277 (S.D.N.Y. 1995) ("The U-4, however, is not a contract with [the employer] but rather an application to qualify with various security exchanges. The U-4 is a separate contract, and as long as this contract is effective, the terms of the agreement must be followed, regardless of the fate of a separate, though related, agreement.").

Plaintiff's first argument is unavailing.

---

[1] Because the U-4 Form is not an employer-employee contract, plaintiff's reliance on J.I. Case Co. v. NLRB is misplaced. 321 U.S. 332 (1944). In J.I. Case Co., the Court found that an employee's individual contracts with an employer may not limit or condition the terms of a collective bargaining agreement with that employer; such individual contracts are superseded by the collective agreement. See id. at 337-339. The Court did not address an employee's individual contracts with other parties.

B. Failure to Provide NASD Code

Second, plaintiff claims that the arbitration agreement is unenforceable because defendant failed to provide plaintiff with a copy of the NASD Code. Plaintiff argues that an agreement to forego statutory claims must be "knowing" and "appropriate" to be effective. See Rosenberg v. Merrill Lynch, No. 98-1246, 1999 WL 80964 (1st Cir. Feb. 24, 1999) (holding that a U-4 agreement to arbitrate must be "appropriate" in the context of Title VII and the ADEA); Prudential Ins. Co. of America v. Lai, 42 F.3d 1299 (9th Cir. 1994) (holding that a U-4 agreement to arbitrate must be "knowing" to encompass employment disputes under Title VII and related state statutes.) Plaintiff believes that the agreement to arbitrate in his U-4 Form is neither "knowing" nor "appropriate" because it fails to specify the types of disputes to be arbitrated and because plaintiff never received a copy of the incorporated NASD Code.

1. Knowing Standard

Plaintiff relies on Lai, a Ninth Circuit case adopting a "knowing" standard. 42 F.3d 1299. In response, defendant points to decisions which reject the reasoning in Lai and refuse to adopt such a requirement. See Seus v. John Nuveen & Co., 146 F.3d 175 (3d Cir. 1998); Ludwig v. Equitable Life Assurance Society, 978 F. Supp. 1379 (D. Kan. 1997); Beauchamp v. Great West Life Assurance Co., 918 F. Supp. 1091 (E.D. Mich. 1996). Defendant's citations reveal a circuit split about whether a "knowing" standard applies to U-4 agreements, with the Third Circuit on one side, the Ninth Circuit on the other, and the Sixth Circuit having yet to decide the issue.

In the absence of Sixth Circuit precedent, I find it unnecessary to follow the reasoning of either the Third or Ninth Circuit. Instead, I shall follow the First Circuit's reasoning in Rosenberg and adopt an "appropriate" standard.

2. Appropriate Standard

Plaintiff relies on Rosenberg, a First Circuit case adopting an "appropriate" standard. 1999 WL 80964. In Rosenberg, the plaintiff signed a U-4 agreement which contained an arbitration clause. See id. The clause did not list the types of disputes covered, instead incorporating the rules, constitutions, and by-laws of the New York Stock Exchange (NYSE). See id. at 2. The NYSE Rules require arbitration of controversies arising out of employment or termination of employment. See id. at 18. The U-4 agreement also contained a portion signed by the employer, certifying that the plaintiff was familiar with the NYSE Rules. See id. at 20-21. The Rosenberg plaintiff did not receive a copy of the Rules and nobody discussed the arbitration clause with her. See id. at 20.

The First Circuit, while recognizing the circuit split about whether to apply a "knowing" standard, declined to decide the issue. Instead, the court looked to the Civil Rights Act of 1991 (1991 CRA), which affects Title VII, the ADEA, and the Americans with Disabilities Act (ADA). See Civil Rights Act of 1991, Pub. L. N. 102-166 §118, 105 Stat. 1071, 1081 (1991). The 1991 CRA contains the following operative language: "[w]here appropriate and to the extent authorized by law, . . . arbitration . . . is encouraged to resolve disputes arising under [these laws]." Id. (emphasis added).

Thus, the First Circuit focused on whether the arbitration clause was "appropriate," finding support for this approach in a recent Supreme Court decision which noted the same language in the ADA. See Wright v. Universal Maritime Serv. Corp., 119 S. Ct. 391, 397 n.2 (1998) (concluding that a union agreement to arbitrate must be clear and unmistakable to be "appropriate" under the ADA, but taking no position on the effect of that language in areas outside of collective bargaining).

Upon applying the "appropriate" standard to the facts at hand, the First Circuit determined that the U-4 agreement did not satisfy the standard due to the employer's failure to provide plaintiff with a copy of or otherwise familiarize her with the NYSE rules. See Rosenberg, 1999 WL 80964 at 21. The court found that the employer certification section of the U-4 agreement "explicitly contemplated that [the employer] would take the steps necessary to ensure that [the plaintiff] was aware of the NYSE rules." Id. The U-4 agreement could not be "appropriate" where the employer failed to take those steps.[2]

The First Circuit narrowly confined its holding to Title VII or ADEA claims outside of a collective bargaining context, declining to resolve any broader questions about enforceability of arbitration agreements. See id. at 20. I shall do the same.

---

[2] The court also found that other contract principles supported placement of the burden on the employer. See Rosenberg at 20 n. 16.

Applying the First Circuit's reasoning to the present case, I find that the U-4 Form is not an "appropriate" agreement to arbitrate plaintiff's claims. As in Rosenberg, plaintiff signed a U-4 Form containing an Arbitration Clause which did not list the types of disputes covered, instead incorporating the rules, constitutions, and by-laws of NASD. The NASD Code, like the NYSE Rules in Rosenberg, requires arbitration of controversies arising out of employment or termination of employment. The U-4 Form also contains the same Employer Certification provision as the U-4 agreement in Rosenberg. Like the plaintiff in Rosenberg, plaintiff did not receive a copy of the NASD Code and no agent of defendant discussed the arbitration clause with him.

The Employer Certification, as in Rosenberg, contemplates steps by defendant which were not taken. Therefore, plaintiff successfully argues that the arbitration agreement is not "appropriate" under Title VII and the ADEA. Defendant's motion shall be denied.

C. Legislative Intent

Third, plaintiff claims that compelled arbitration of Title VII disputes conflicts with legislative intent. Plaintiff relies on excerpts from the legislative history surrounding the 1991 CRA amendments to Title VII, arguing that an election to arbitrate must be knowing and voluntary for Title VII claims. Plaintiff is merely arguing, once again, that I should adopt a "knowing" standard. As discussed above, I find it unnecessary to decide whether or not to adopt such a standard because the arbitration agreement is not "appropriate."

Conclusion

For the foregoing reasons, it is hereby

ORDERED THAT

Defendant's motion for dismissal and to compel arbitration (Doc. 8) shall be, and hereby is, denied.

So ordered.

/s/_____
James G. Carr
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

[Filed December 4, 1998]

No. 3:98CV7711

ROBERT L. HASKINS, SR.
440 Torrington Drive
Toledo, Ohio 43615
Plaintiff,

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, THE aka PRUDENTIAL INSURANCE AND FINANCIAL SERVICES
c/o Statutory Agent
Elaine M. Barber
4614 Imperial Drive
Toledo, Ohio 43624
Defendant.

JUDGE JAMES G. CARR

FIRST AMENDED COMPLAINT;
JURY DEMAND ENDORSED HEREON

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 29 U.S.C. Section 626 (b) and (c) and 29 U.S.C. Section 629 (b) which state that any aggrieved individual under the Federal Age Discrimination in Employment Act may bring a civil action in any Court of competent jurisdiction. This is in part a civil suit at law and in equity for damages and equitable relief brought pursuant to the Age Discrimination in Employment Act, as amended, (ADEA), 29 U.S.C. Section 621 et seq.

2. Jurisdiction of this Court is also invoked pursuant to Title VII of the Civil Rights Act of 1964 as amended 42 U.S.C. Section 2000(e) et seq., providing for injunctive and declaratory relief and damages for racial discrimination in employment.

3. Jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 1981 providing injunctive and declaratory relief and damages for racial discrimination. Said act known as the Civil Rights Act of 1866.

4. On or about August 11, 1997, Plaintiff, Robert L. Haskins, Sr., filed a charge on the basis of race and age.

5. Subsequently, the Plaintiff's charge of discrimination in the basis of age against Defendant was timely filed with the United States Equal Employment Opportunity Commission (Charge No. 22A977979).

6. Plaintiff, Robert L. Haskins, Sr., states that more than sixty (60) days have now elapsed since the filing of

his charge with the Equal Employment Opportunity Commission.

7. Plaintiff states that on September 1, 1998, the Equal Employment Opportunity Commission notified him of his right to file a suit with regard to age and race discrimination within ninety (90) days of Plaintiff's receipt of said charge. Plaintiff states that he received said charge on September 9, 1998. See Exhibit "B".

8. Plaintiff further invokes this court's supplemental jurisdiction pursuant to 28 U.S.C. Section 1367 with respect to other claims under Ohio statutory and common law.

NATURE OF THE CASE

9. Plaintiff, Robert L. Haskins, Sr., seeks injunctive relief restoring him to his position as a Representative with Defendant together with full back pay, past, present and future commissions, seniority and benefits. Alternatively, Plaintiff seeks an award of front pay in lieu of reinstatement. Plaintiff also seeks compensatory damages for emotional and mental distress, pain and suffering and humiliation and embarrassment under applicable federal and state law. Plaintiff brings this case for age and race discrimination. Plaintiff also seeks an award for liquidated damages in an amount equal to his lost wages and his costs and attorney fees. Plaintiff also seeks a company wide injunction against defendant's racially discriminatory hiring, promotion and termination practices.

PARTIES

10. Plaintiff, Robert L. Haskins, Sr. is a black male citizen of the United States currently fifty-six (56) years of age and a resident of Toledo, Lucas County, Ohio. Plaintiff is a former agent for Defendant.

11. Defendant is duly qualified to conduct business in the State of Ohio and maintains its local headquarters in the City of Maumee, Lucas County, Ohio. Said Defendant is an employer within the meaning of Section 11(b) of the ADEA, 29 U.S.C. Section 630(b), and within the meaning of Title VII of the Civil Rights Act of 1964, in that Defendant is and has been, at all times material hereto; engaged in an industry affecting commerce, and has employed twenty (20) or more employees for every working day in each of twenty (20) or more calendar weeks in the current and previous calendar year.

FIRST CLAIM FOR RELIEF OF PLAINTIFF 29 U.S.C. SECTION 621 ET SEQ. - AGE DISCRIMINATION

12. Plaintiff incorporates each and every allegation contained in paragraphs one (1) through eleven (11) of this Complaint, supra, by reference in its entirety as if fully restated herein.

13. Plaintiff states that he is and, at all times material hereto, has been within the age group protected by the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621 et seq.

14. Plaintiff states that he was employed by Defendant for seventeen (17) years as a representative and that he operated an agency at 1401 Indiana Avenue in Toledo, Ohio and was well known in the community as an agent for defendant. During his tenure of employment with defendant, plaintiff achieved national recognition and was a 12 year life member of the Million Dollar Roundtable Association. In September of 1996, plaintiff was accused of improperly handling two cases. Although plaintiff insisted that he did not improperly handle these two accounts based on past practices of defendant, plaintiff resolved this issue with the defendant on October 3, 1996 and received a reprimand. Subsequently, plaintiff requested the eligibility of his retirement which was confirmed by defendant's National Benefits Office on May 20, 1997. Plaintiff was forced to retire because as of January 1, 1997 defendant withdrew all clerical support even though he had one of the largest agencies. Plaintiff officially sent notification of his retirement to become effective on July 1, 1997. Plaintiff's 55th birthday fell on June 29, 1997. On June 12, 1997 , the defendant, acting by its recently appointed young white male Regional Vice President, who had only been on the job approximately 2 1/2 weeks, terminated plaintiff's employment over issues which plaintiff had earlier resolved and for which he had received a reprimand.

15. Plaintiff was satisfactorily performing his job and had not committed any further infractions to warrant his sudden termination. Plaintiff's termination permitted the retention of other younger agents and he was in fact replaced by three younger white male agents according to former clients.

16. Plaintiff states that the Defendant has intentionally and/or willfully violated the Age Discrimination in Employment Act as amended and the reason that it advanced for his termination was pretextual.

17. As a proximate result of the acts of the Defendants complained of herein, Plaintiff has suffered the loss of his job and/or loss of past and future wages, benefits and pension benefits. Plaintiff also lost the sponsorship of Prudential, thus having his insurance license suspended and losing his NASD registration. Plaintiff also has lost past and future renewal commissions and future commission dollars on new business. Plaintiff has also suffered, as a proximate result of the acts of Defendant complained of herein, mental and emotional stress, pain and suffering, humiliation and embarrassment.

SECOND CLAIM FOR RELIEF
TITLE VII 42 U.S.C. SECTION 2000e ET SEQ. -
RACE DISCRIMINATION

18. Plaintiff incorporates each and every allegation contained in paragraphs one (1) through seventeen (17) of this Complaint, supra, by reference in its entirety as if fully restated herein.

19. Plaintiff states that he is an African American citizen of the United States.

20. Plaintiff states that he was meeting defendant's legitimate expectations but was suddenly forced to retire for reasons set forth in this Complaint, supra. Plaintiff then submitted retirement papers but was terminated seventeen (17)

days prior to his retirement date by a white regional vice president from Indiana who had been on the job approximately 2 1/2 weeks and whom plaintiff had not yet even met.

21. Plaintiff further states that he was forced to retire and terminated from the position of representative on the basis of race. Plaintiff was meeting legitimate expectations and had not violated any rules which would warrant termination. Plaintiff's termination permitted retention of white agents and was wholly pretextual. In fact, plaintiff was replaced by three younger white male agents according to past clients. Moreover, plaintiff was the only agent servicing the African American community and the only black agent in the city and the defendant's district. Plaintiff states that defendant has purposefully failed to hire a sufficient number of African American representatives and office clerical and other employees and has applied racially discriminatory promotion and discharge policies. These policies extend companywide throughout the United States.

22. The acts of Defendant constitute discrimination and/or intentional discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e et. Seq.

23. As a proximate result of the acts of the Defendants complained of herein, Plaintiff has suffered the loss of his job and/or loss of past and future wages, benefits and pension benefits. Plaintiff also lost the sponsorship of Prudential, thus having his insurance license suspended and losing his NASD registration. Plaintiff also has lost past and future renewal commissions and future commission dollars on

new business. Plaintiff has also suffered, as a proximate result of the acts of Defendant complained of herein, mental and emotional stress, pain and suffering, humiliation and embarrassment.

THIRD CLAIM FOR RELIEF
42 U.S.C. SECTION 1981

24. Plaintiff incorporates each and every allegation contained in paragraphs one (1) through twenty-three (23) of this Complaint, supra, by reference in its entirety as if fully restated herein.

25. The acts of Defendant as complained of herein constitute violations and/or willful violations of 42 U.S.C. Section 1981 known as the Civil Rights Act of 1866.

26. As a proximate result of the acts of the Defendants complained of herein, Plaintiff has suffered the loss of his job and/or loss of past and future wages, benefits and pension benefits. Plaintiff also lost the sponsorship of Prudential, thus having his insurance license suspended and losing his NASD registration. Plaintiff also has lost past and future renewal commissions and future commission dollars on new business. Plaintiff has also suffered, as a proximate result of the acts of Defendant complained of herein, mental and emotional stress, pain and suffering, humiliation and embarrassment.

FOURTH CLAIM FOR RELIEF
OHIO REVISED CODE CHAPTER 4112

27. Plaintiff incorporates each and every allegation contained in paragraphs one (1) through twenty-six (26) of this Complaint, supra, by reference in its entirety as if fully restated herein.

28. Plaintiff states that the acts of Defendant are violative of Ohio Revised Code Section 4112.02 made actionable pursuant to 4112.99 on the bases of race and age.

29. As a proximate result of the acts of the Defendants complained of herein, Plaintiff has suffered the loss of his job and/or loss of past and future wages, benefits and pension benefits. Plaintiff also lost the sponsorship of Prudential, thus having his insurance license suspended and losing his NASD registration. Plaintiff also has lost past and future renewal commissions and future commission dollars on new business. Plaintiff has also suffered, as a proximate result of the acts of Defendant complained of herein, mental and emotional stress, pain and suffering, humiliation and embarrassment.

FIFTH CLAIM FOR RELIEF

30. Plaintiff incorporates each and every allegation contained in paragraphs one (1) through twenty-nine (29) of this Complaint, supra, by reference in its entirety as if fully restated herein.

31. Defendant has intentionally engaged in unlawful employment practices as described above and as

acted with reckless indifference to the rights of Plaintiff entitling him to compensatory and punitive damages pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981(a).

32. As a proximate result of the acts of the Defendants complained of herein, Plaintiff has suffered the loss of his job and/or loss of past and future wages, benefits and pension benefits. Plaintiff also lost the sponsorship of Prudential, thus having his insurance license suspended and losing his NASD registration. Plaintiff also has lost past and future renewal commissions and future commission dollars on new business. Plaintiff has also suffered, as a proximate result of the acts of Defendant complained of herein, mental and emotional stress, pain and suffering, humiliation and embarrassment.

WHEREFORE, Plaintiff respectfully prays for an injunction restoring him to an appropriate position which he should have had but for the acts of Defendant together with an injunction enjoining any further acts of discrimination against him on the bases of age or race, together with full back pay, seniority and benefits together with proper wage increases which he should have received. Plaintiff also prays for receipt of lost past and future commissions. Plaintiff also prays for an award of liquidated damages in an amount equal to damages plus his costs and reasonable attorney fees. Plaintiff further prays for an appropriate nationwide injunction requiring defendant to hire appropriate numbers of African American employees including representatives and office and clerical employees and enjoining defendant from furthering its discriminatory promotion and discharge policies. Plaintiff further demands judgment against

Defendant for compensatory damages and punitive damages plus costs and interest.

Respectfully submitted,

WASSERMAN, BRYAN, LANDRY & HONOLD

/s/_____
Francis J. Landry
Attorney for Plaintiff
Robert L. Haskins, Sr.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable in the within cause.

/s/_____
Francis J. Landry

EXHIBIT "A"

CHARGE OF DISCRIMINATION

[FOLD OUT]

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974: See Privacy Act Statement before completing this form.

AGENCY
[X] FEPA
[X] EEOC

CHARGE NUMBER

OHIO CIVIL RIGHTS COMMISSION AND EEOC

NAME (INDICATE MR., MS., MRS.)
Robert L. Haskins, Sr.

HOME TELEPHONE
(419) 536-7566

STREET ADDRESS
440 Torrington Drive

CITY, STATE, ZIP CODE, AND COUNTY
Toledo, OH 43615 Lucas County

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW.)

NAME
Prudential Insurance Co.

NUMBER OF EMPLOYEES
+15

TELEPHONE (INCLUDE AREA CODE)
(419) 893-6227

STREET ADDRESS
1715 Indian Wood Circle, Suite #105

CITY, STATE AND ZIP CODE
Maumee, OH 43537

COUNTY
Lucas

NAME

TELEPHONE (INCLUDE AREA CODE)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES)
[X] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN
[ ] RETALIATION [X] AGE [ ] DISABILITY [ ] OTHER (SPECIFY)

DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA)
LATEST (ALL)
6/6/97
[ ] CONTINUING ACTION

THE PARTICULARS ARE (IF ADDITIONAL SPACE IS NEEDED, ATTACH EXTRA SHEET(S):

1. I am a fifty-five year old black person. On June 6, 1997, I was terminated by respondent. I had been employed by respondent since August 25, 1980, most recently as a Sales Representative.
2. John W. Greene, Jr., Regional Vice President, informed me via letter dated June 6, 1997, received by me on June 12, 1997, that I was being terminated for improper handling of the McIntosh, Wainwright and Johnson transactions.
3. I believe that I have been unlawfully discriminated against due to respondent's consideration of my **race, black** with regard to **termination**, inasmuch as:
   a. I am a member of a protected minority; I am a black person; I was qualified for the job from which I was discharged; I was in fact discharged; after discharge, the company filled my position with a non-minority.
4. I believe that I have been unlawfully discriminated against due to respondent's consideration of my **age, fifty five** with regard to my **termination**, inasmuch as:
   b. I belong to a protected class; I am a person who is fifty-five years of age; my job performance was sufficient to meet my employer's legitimate expectations; I was discharged, despite of my performance; respondent sought a replacement for me.

I have not commenced any action under sections 4112.14 or 4112.02(N), Revised Code, with respect to the subject matter of this affidavit. I understand that, upon the filing of this charge affidavit with the Ohio Civil Rights Commission, I am barred from instituting any such civil action and that any monetary award or financial benefit I may receive may be limited to back pay and/or restoration of employment fringe benefits and may not include other damages to which I may become entitled as a result of such civil action. I understand that I am not precluded from filing suit in federal court.

CGJ/CAM:rg

[X] I ALSO WANT THIS CHARGE FILED WITH THE EEOC. I WILL ADVISE THE AGENCIES IF I CHANGE MY ADDRESS OR TELEPHONE NUMBER AND I WILL COOPERATE FULLY WITH THEM IN THE PROCESSING OF MY CHARGE IN ACCORDANCE WITH THEIR PROCEDURE.

NOTARY (When necessary for State and Local Requirements)

I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF COMPLAINANT

August 11, 1997
DATE

CHARGING PARTY SIGNATURE

17

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (DAY, MONTH, YEAR)
11th, August 1997

OCRC REPRESENTATIVE

EXHIBIT "A"

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DETERMINATION

[FOLD OUT]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland District Office

1660 West Second St., Suite 850
Cleveland, OH 44113-1454
PH: (216) 522-2001
TDD: (216) 522-8441
FAX: (216) 522-7195

Recd
9-9-98
Closed
A

Charge No.: 22A977979

Robert L. Haskins, Sr.
440 Torrington Drive
Toledo, Ohio 43615

Charging Party

Prudential Insurance Company
1715 Indian Wood Circle, Suite H105
Maumee, Ohio 43537

Respondent

DETERMINATION

On behalf of the Commission, I issue the following determination on the merits of the subject charge. All requirements for coverage have been met. Substantial weight has been accorded to the findings of the Ohio Civil Rights Commission, and having examined that agency's findings and the record presented, I conclude that insufficient evidence was obtained during the investigation to establish a violation of Title VII of the Civil Rights Act of 1964, as amended and Age Discrimination in Employment Act (ADEA).

This determination and dismissal concludes the processing of this charge. This letter will be the only notice of dismissal and the only notice of the Charging Party's right to sue rent by the Commission. Following the dismissal, the Charging Party may only pursue this matter by filing suit against the respondent(s) named in the charge within 90 days of receipt of this letter. Otherwise, the Charging Party's right to sue will be lost.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:

SEP 01 1998
Date

Dorothy J. Porter/KEL
Dorothy J. Porter
District Director

U.S. Postal Cert. No.: Z166232336

APPENDIX D

FORM U-4
UNIFORM APPLICATION FOR SECURITIES REGISTRATION OR TRANSFER AND EXHIBITS PERTAINING TO U-4 APPLICATION

[FOLD OUT]

FORM U-4

UNIFORM APPLICATION FOR SECURITIES INDUSTRY REGISTRATION OR TRANSFER

If there is an amendment to this page, complete only Items 1, 2, 3, 4 and Items being amended

1 LAST NAME	JR/SR etc	FIRST NAME	MIDDLE NAME (SPECIFY if NONE)	2 APPLICANT'S CRD #
HASKINS	SR.	ROBERT	L.	SOC SEC # 412-62-6248

3 FIRM CRD #	3 FIRM NAME (Do not include this employment under Item 13 page 2)	APPLICANT'S NFA #
	PRUDENTIAL INSURANCE & FINANCIAL SERVICES	5 EMPLOYMENT DATE 08-25-198[illegible]

4 FIRM MAIN ADDRESS	STREET	CITY	STATE	ZIP
1				

7 BRANCH I.D. #	OFFICE OF EMPLOYMENT ADDRESS	STREET	CITY	STATE	ZIP
	1401	INDIANA AVE.	TOLEDO	OH	43607

8 Will applicant maintain registration with another Broker Dealer not under common ownership or control with the firm named in Item 4 above? ☐ Yes ☒ No
(If "Yes", list in Item 13)
If "Yes", has/have the firm(s) been contacted? ☐ Yes ☐ No

9 Will applicant maintain multiple registrations with Broker-Dealers under common ownership or control with the firm named in Item 4 above? ☐ Yes ☒ No
If "Yes", fill in information below

Firm CRD # _____ Name of Firm _____
Firm CRD # _____ Name of Firm _____
Firm CRD # _____ Name of Firm _____

10 TO BE REGISTERED WITH THE FOLLOWING.

SRO

☐ ASE	☐ BSE	☐ CBOE	☐ CSE	☐ MSE	☐ NASD	☐ NFA	☐ NYSE	☐ PHLX	☐ PSE	☐ Other (Specify)		

JURISDICTION

☐ AK	☐ AL	☐ AR	☐ AZ	☐ CA	☐ CO	☐ CT	☐ DC	☐ DE	☐ FL	☐ GA	☐ HI	☐ IA
☐ ID	☐ IL	☐ IN	☐ KS	☐ KY	☐ LA	☐ MA	☐ MD	☐ ME	☐ MI	☐ MN	☐ MO	☐ MS
☐ MT	☐ NC	☐ ND	☐ NE	☐ NH	☐ NJ	☐ NM	☐ NV	☐ NY	☐ OH	☐ OK	☐ OR	☐ PA
☐ RI	☐ SC	☐ SD	☐ TN	☐ TX	☐ UT	☐ VA	☐ VT	☐ WA	☐ WI	☐ WV	☐ WY	☐ PR

☐ *All Jurisdictions. (Check In Lieu Of Each Individual Box).*

11 TYPE OF EXAMINATION/REGISTRATION REQUESTED (check all applicable categories)

- ☐ S-3 Commodity Futures Examination
- ☐ S-4 (OP) Registered Options Principal
- ☐ S-5 Interest Rate Options Examination
- ☐ S-6 (IR) Investment Company and Variable Contracts Products Representative
- ☐ S-7 (GS) Full Registration/General Securities Representative
- ☐ S-7 (TR) Securities Trader (NYSE)
- ☐ S-7 (TS) Trading Supervisor (NYSE)
- ☐ S-8 (SU) General Securities Sales Supervisor
- ☐ S-8 (BM) Branch Office Manager (NYSE)
- ☐ S-11 (AR) Assistant Representative/Order Processing
- ☐ S-15 (FC) Foreign Currency Options
- ☐ S-16 (SA) Supervisory Analyst
- ☐ S-22 (DR) Direct Participation Program Representative
- ☐ S-24 (GP) General Securities Principal
- ☐ S-26 (IP) Investment Company and Variable Contracts Products Principal
- ☐ S-27 (FN) Financial and Operations Principal
- ☐ S-28 (FI) Introducing Broker-Dealer/Financial and Operations Principal
- ☐ S-39 (DP) Direct Participation Program Principal
- ☐ S-42 (OR) Options Representative
- ☐ S-52 (MR) Municipal Securities Representative
- ☐ S-53 (MP) Municipal Securities Principal
- ☐ S-62 (CS) Corporate Securities Representative
- ☐ S-63 Uniform Securities Agent State Law Examination
- ☐ S-65 Uniform Investment Advisor Law Examination
- ☐ (AG) Agent
- ☐ (RG) Government Securities Representative
- ☐ (PG) Government Securities Principal
- ☐ (ME) Member Exchange (NYSE)
- ☐ (LE) Securities Lending Representative (NYSE)
- ☐ (LS) Securities Lending Supervisor (NYSE)
- ☐ (AM) Allied Member (NYSE)
- ☐ (AP) Approved Person (NYSE)
- ☐ (AI) Agent of the Issuer
- ☐ Reschedule Exam Series _____
- ☐ Other _____

THIS PORTION MUST BE COMPLETED FOR ALL PARTIAL (TRANSFER OR RE-REGISTRATION) FILINGS

FROM MONTH	YEAR

12 APPLICANT'S CURRENT ADDRESS: 440 TORREYSON Drive, TOLEDO, OH 43615
STREET CITY STATE ZIP

FIRM(S) APPLICANT IS TRANFERRING FROM: TERMINATION DATE: (Mo/Day/Yr.)

☐ ◄ *CHECK IF THIS U-4 IS BEING FILED TO MAKE PERMANENT A TEMPORARY REGISTRATION (TAT).*

The appropriate signatory area *DOES NOT* have to be completed *UNLESS* this page is being submitted as an amendment.

06-21-1996 [signature] 202
MONTH DAY YEAR SIGNATURE OF APPROPRIATE SIGNATORY

ROBERT L. HASKINS SR.
TYPE OR PRINT NAME OF APPROPRIATE SIGNATORY

Exhibit "2" to "A"

CRD USE ONLY

Form U-4

Disclosure Reporting Page (DRP)

LAST NAME	JR./SR., etc.	FIRST NAME	MIDDLE NAME (Specify if none)
HASKINS		ROBERT	LEWIS

CRD #	NFA #	SOCIAL SECURITY #	FIRM CRD #
1053885	N/A	412-62-6248	5685

INSTRUCTIONS

- *This Disclosure Reporting Page (DRP) is used to report details of affirmative responses to Item 22 questions.*
- Use a separate DRP for each event or proceeding. Complete Items 1-8 below. (Item 9 is optional)
- One event may result in more than one "yes" answer in Item 22. If so, use only one DRP to report this information.
- The information provided on this DRP will be entered into the CRD system for verification. It is very important that full and complete information is provided for each item on this form.
- It is not a requirement that documents be provided for each event or proceeding. Should they be provided, the documents with the DRP may not be accepted as disclosure in lieu of answering the questions on this form.

1. This DRP relates to the following questions in Item 22:

☐ 22A (1)	☐ 22C (1)	☐ 22D (3)	☐ 22E (2)	☐ 22E (5)	☐ 22F (4)	☐ 22I	☐ 22M	
☐ 22A (2)	☐ 22C (2)	☐ 22D (4)	☐ 22E (3)	☐ 22F (1)	☐ 22G	☐ 22J	☐ 22N (1)	
☐ 22A (3)	☐ 22D (1)	☐ 22D (5)	☐ 22E (4)	☐ 22F (2)	X 22H (1)	☐ 22K	☐ 22N (2)	
☐ 22B	☐ 22D (2)	☐ 22E (1)	☐ 22E (6)	☐ 22F (3)	☐ 22H (2)	☐ 22L	☐ 22N (3)	

2. Is this DRP being filed to change or update any information regarding a previously reported event or proceeding? ☐ YES X NO
   Complete Items 1-8, and if yes, also circle the items below which are being changed.
3. What is the current status of the event or proceeding? (Enter name of firm, regulator, court, arbitration, etc.) Michael and Dixie Wagner
4. What type of proceeding was this? (i.e. customer complaint, criminal, civil, administrative, primary, arbitration) Customer Complaint.
5. On what date was the event or proceeding initiated? November 6, 1996
6. Identify the docket or case number of the event or proceeding (if any): N/A
7. What were the allegations against you? (Include amounts of actual or alleged damages or claims.) Regarding the purchases of Variable Appreciable Life insurance contract in 1991 and a ProVider Variable Appreciable Life insurance contract in 1995, the clients alleged misrepresentation concerning funding proposals monetary damages were alleged.
8. a. What is the current status of the event or proceeding? Closed.
   b. On what date was this status reached? February 5, 1997.
   c. What was the result? (Include felony/misdemeanor, terms if any, description of penalties, and all of fine, payment or settlement, terms of disposition, length of suspension or restriction, etc.) The Company rescinded Contract No. 98-298-208 and restored the dividends and loans to Contract No. 75-389-523 and the values to Contract No 519-920 that were taken from these contracts and applied to Contract No. 98-298-208. The cash payments made into this contract were returned to the client. The Company also rescinded Contract No. R5-280-289 and restored the values to Contract No. 99-519-920 that were applied to Contract No. R5-280-289. The cost to the Company was $3,904.48.
9. You may provide a brief summary of this event or proceeding. (Your information must fit within the space provided.)

The letter from my attorney, Mr. C. Allen McConnell, was attached to the U-4 Disclosure reporting page that was sent to the H.O., and was disallowed. I want the record to show that I had pre-counseling, that advised me to sign the U-4 Amendment with strong objection and that it was strickly out of force on part of Prudential, and the alternative is the loss of my Insurance license. It is absurd to say the least that thereal reason for this problem with the Wagner's, after 15 years and several new policies purchased from a later, is because of the untimely letter from Prudential's Policy Owners Tax Division as per the Wagn However, I, the Agent, who did no wrong became the scape goat victim of unfornate circumstances. My full answer of 1-28-97 submitted to Prudential was not even acknowledged.

3-7-97
Month Day Year

Signature of Applicant

Form U-4

If there is an amendment to this page, complete only Item 21 and Items being amended

	FIRM NO. #	SOCIAL SECURITY #	APPLICANT'S CRD #	APPLICANT'S NO. #
85		412-62-6248	105 3885	

IF ANY OF THE FOLLOWING QUESTIONS IS "YES" AND YOU CANNOT UTILIZE THE CERTIFICATION IN ITEMS 22D BELOW, ATTACH COMPLETE DETAILS OF ALL EVENTS OR PROCEEDINGS ON DRP(S)

S

Accused of a crime in a formal complaint, information, or indictment or Investment-Related – Pertaining to securities, commodities, banking, insurance, to (including, but not limited to acting as or being associated with a broker-dealer, company, investment adviser, futures sponsor, bank, or savings and loan association)

- Involved – Using an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.
- Foreign Financial Regulatory Authority – includes (A) a foreign securities authority; (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment related activities; or (C) membership organization, a function of which is to regulate the participation of its members in the activities listed above

	YES	NO	
ven convicted of or pleed guilty or nolo contendere ("no contest") in a domestic or foreign court to:			
or misdemeanor involving: investments or an investment related business, fraud, false statements or omissions, wrongful taking of property, or bribery, counterfeiting or extortion?	☐	☐	1
?	☐	☐	2
r felony?	☐	☐	3
an organization over which you exercised management or policy control, ever been charged with any felony or charged with a misdemeanor specified (1) or (2) in a domestic or foreign court?	☐	☐	4
nestic or foreign court ever:			
you in connection with any investment-related activity?	☐	☐	5
if you were involved in a violation of investment-related statutes or regulations?	☐	☐	6
Securities and Exchange Commission or the Commodity Futures Trading Commission ever:			
u to have made a false statement or omission?	☐	☐	7
u to have been involved in a violation of investment-related regulations or statutes?	☐	☐	8
u to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐	9
in order denying, suspending or revoking your registration or disciplined you by restricting your activities?	☐	☐	10
a civil money penalty on you, or ordered you to cease and desist from any activity?	☐	☐	10A
or Federal regulatory agency or any state regulatory agency or foreign financial regulatory authority ever:			
u to have made a false statement or omission or been dishonest, unfair or unethical?	☐	☐	11
u to have been involved in a violation of investment regulations or statutes?	☐	☐	12
u to have been a cause of an investment related business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐	13
in order against you in connection with investment-related activity?	☐	☐	14
suspended, or revoked your registration or license or otherwise prevented you from associating with an investment-related business, or disciplined you cting your activities?	☐	☐	15
or suspended your license as an attorney, accountant or federal contractor?	☐	☐	16
-regulatory organization or commodities exchange:			
u to have made a false statement or omission?	☐	☐	17
u to have been involved in a violation of its rules?	☐	☐	18
u to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?	☐	☐	19
d you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?	☐	☐	20
ign government ever entered an order against you related to investments or fraud, other than as reported in Items 22A, B, C or E?	☐	☐	21
or been the subject of an investment-related, consumer-initiated complaint or proceeding that:			
ompensatory damages of $10,000 or more, fraud, or wrongful taking of property?	☒	☐	22
led or decided against you for $5,000 or more, or found fraud or the wrongful taking of property?	☐	☐	23
e the subject of any complaint, investigation, or proceeding that could result in a "yes" answer to parts A-H of this item?	☐	☐	24
ng company denied, paid out on, or revoked a bond for you?	☐	☐	25
any unsatisfied judgments or liens against you?	☐	☐	26
a firm that you exercised management or policy control over, or owned 10% or more of the securities of, failed in business, made a compromise with ed a bankruptcy petition or been declared bankrupt?	☐	☐	27
r or dealer firm that you exercised management or policy control over, or owned 10% or more of the securities of, been declared bankrupt, had a inted under the Securities Investor Protection Act, or had a direct payment procedure initiated?	☐	☐	28
ion discharged or permitted to resign because you were accused of:			
investment-related statutes, regulations, rules, or industry standards of conduct?	☐	☐	29
the wrongful taking of property?	☐	☐	30
supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct?	☐	☐	31

DISCLOSURE CERTIFICATION (OPTIONAL)

certify to the accuracy and completeness of the disclosure information in your file if it has been fully provided in DRP format. If DRP(s) are not on file, do not answer these ·es. Provide full details of all matters on DRP(s). All appropriate questions in item 22 must be answered, regardless of whether the certification is being utilized. Refer ons on the inside cover of the Form U-4 for additional information on the utilization of the certification language.

iewed a copy of my disclosure file taken from system. I acknowledge that all information therein is fully disclosed, accurate and in DRP further certify the following:

1. I have no new information to add to my disclosure file. ☐ 32
2. I have new information to add to my disclosure file which is reported on the attached DRP(s). ☐ 33
3. I have updated information, reported on the attached DRP(s), which was previously reported and contained in Occurrence _____ ☐ 34

nt and appropriate signatory area *DOES NOT* have to be completed s page is being submitted as an amendment.

7-97 X _____
DAY YEAR SIGNATURE OF APPLICANT

ICANT: ROBERT HASKINS, SR.

-97 X _____

Form U-4

8-25-80 | 5685 | Prico Securities Corporation

FIRM MAIN ADDRESS — STREET: 3003 North Central Avenue | CITY: Phoenix | STATE: AZ | ZIP: 85012

BRANCH I.D. NO. | OFFICE OF EMPLOYMENT ADDRESS — STREET: 5600 Monroe St. | CITY: Sylvania | STATE: Ohio | ZIP: 43560

TO BE REGISTERED WITH THE FOLLOWING: (DESIGNATE 1 - INITIAL REGISTRATION, 2 - TRANSFER OR REGISTRATION)

☐ ASE 0850 ☐ CSE 0400 ☐ MSE 0410 ☐ NASD 0260 ☐ NYSE 0430 ☐ PHLX 0440 ☐ PSE 0450 ☐ SACO 0290 ☐ OTHER (SPECIFY) 0445

☐ AL 0460 ☐ CA 0490 ☐ DC 0530 ☐ ID 0670 ☐ KS 0810 ☐ MO 0830 ☐ MS 0840 ☐ NV 0720 ☐ NY 0770 ☐ OK 0810 ☐ SC 0860 ☐ UT 0890 ☐ WV 0880

☐ AK 0400 ☐ CO 0500 ☐ FL 0540 ☐ IL 0700 ☐ KY 0830 ☐ MA 0860 ☐ MD 0700 ☐ NH 0740 ☐ NC 0760 ☐ OR 0830 ☐ SD 0900 ☐ VT 0800 ☐ WI 0840 ☒ EXAM REQUEST

☐ AZ 0470 ☐ CT 0510 ☐ GA 0550 ☐ IN 0660 ☐ LA 0630 ☐ MI 0870 ☐ MT 0710 ☐ NJ 0760 ☐ ND 0780 ☐ PA 0820 ☐ TN 0870 ☐ VA 0810 ☐ WY 0960

☐ AR 0460 ☐ DE 0520 ☐ HI 0560 ☐ IA 0680 ☐ ME 0840 ☐ MN 0680 ☐ NE 0720 ☐ NM 0760 ☒ OH 0800 ☐ RI 0840 ☐ TX 0880 ☐ WA 0930 ☐ PR 0964

WILL APPLICANT MAINTAIN REGISTRATION WITH ANOTHER BROKER/DEALER? ☒ YES ☐ NO — IF "YES" FILL IN INFORMATION BELOW:

680 | The Prudential Insurance Company | Barbara Gimbel

BD I.D. NO. | NAME OF FIRM | NAME OF PERSON(S) CONTACTED

TYPE OF APPROVAL REQUESTED: (CHECK ALL APPLICABLE CATEGORIES)

- ☐ AGENT OF ISSUER 1010
- ☐ ALLIED MEMBER 1020
- ☐ APPROVED PERSON (EXCHANGE) 1160
- ☐ BRANCH OFFICER MANAGER 1030
- ☐ DIRECT PARTICIPATION PROGRAMS PRINCIPAL 1060
- ☐ DIRECT PARTICIPATION PROGRAMS REPRESENTATIVE 1080
- ☐ FINANCIAL AND OPERATIONS PRINCIPAL 1040
- ☐ FULL REGISTRATION/GENERAL SECURITIES REPRESENTATIVE 1010
- ☐ GENERAL SECURITIES PRINCIPAL 1250
- ☐ INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS PRINCIPAL 1270
- ☒ INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS REPRESENTATIVE 1065
- ☐ MANAGER OFFICE OF SUPERVISORY JURISDICTION 1340
- ☐ MEMBER (EXCHANGE) 1161
- ☐ MUNICIPAL SECURITIES FINANCIAL AND OPERATIONS PRINCIPAL 1266
- ☐ MUNICIPAL SECURITIES PRINCIPAL 1260
- ☐ MUNICIPAL SECURITIES REPRESENTATIVE 1060
- ☐ OFFICER (TITLE) _____ 1211
- ☐ REGISTERED COMMODITY REPRESENTATIVE 1020
- ☐ REGISTERED OPTIONS PRINCIPAL 1290
- ☐ SOLE PROPRIETOR 1230
- ☐ SUPERVISORY ANALYST 1130
- ☐ OTHER _____ 1200

APPLICANT WILL BE DESIGNATED: (ANSWER ONLY IF APPLICABLE) N/A.

- ☐ CHIEF FINANCIAL AND OPERATIONS PRINCIPAL 1350
- ☐ SENIOR REGISTERED OPTIONS PRINCIPAL 1360
- ☐ COMPLIANCE REGISTERED OPTIONS PRINCIPAL 1370

HAS APPLICANT EVER PASSED AN EXAMINATION, BEEN GRANTED A WAIVER OR QUALIFIED FOR EXEMPTION FROM AN EXAMINATION FOR REGISTRATION IN ANY CAPACITY WITH ANY AGENCY, JURISDICTION, SELF-REGULATORY ORGANIZATION OR COMMISSION? IF SO, INDICATE BELOW:

SRO BODY	DATE	TYPE OF EXAM	BASIS FOR WAIVER (IF ANY)
N/A			

SIGNATURE OF APPLICANT: Robert L. Haskins Sr. — DATE: 06-17-83

NAME OF APPLICANT (PRINT OR TYPE): Robert L. Haskins Sr.

SIGNATURE OF APPROPRIATE SIGNATORY: Barbara B. Gimbel — DATE: JUL 7 1983

NAME OF APPROPRIATE SIGNATORY: Barbara B. Gimbel

NASAA/NASD USE ONLY

Form U-4 1/81

Page 1 of 4

Form U-4

LAST NAME	FIRST NAME	(SPECIFY IF NONE)	(0200)
Haskins	Robert Sr.	Lewis	412-62-6143

5 ADDRESS (0241) STREET	CITY	STATE	ZIP
1212 Upton Ave	Toledo	Ohio	43607

5 DATE OF BIRTH (0250)	6 PLACE OF BIRTH (0260)	5 HEIGHT (0311)	WEIGHT (0312)	HAIR COLOR (0314)	SEX (0313)	COLOR OF EYES (0315)
6-28-42	Dyersburg TENN.	5-6	210	Black	Male	Brown

IDENTIFYING MARKS (0316)	5 ALIAS (SPECIFY IF NONE) (0300)	9 MARITAL STATUS (0270)
None	None	M

6 (IF MARRIED) FULL NAME OF SPOUSE (0221)	MAIDEN NAME OF SPOUSE (0222)
Ollie Haskins	Williams

6 FATHER'S FULL NAME (0340)	MOTHER'S FULL NAME (0330)
Henry Haskins	Lucy Haskins

7 EDUCATIONAL HISTORY

Please fill in for each Educational Institution attended with complete address (Street, City, State, Zip Code)

NAME AND ADDRESS OF INSTITUTION (EXCLUDE ELEMENTARY SCHOOL)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR	COURSE	DAY OR EVENING	DID YOU GRADUATE?	DEGREE	
NAME: Rock Spring High School	8	80	~~Present~~ 5	1981	General Ed.	Day	yes	H.S.	1401
ADDRESS: Rock Spring, TENN.									1402
NAME:									1403
ADDRESS:									1404
NAME:									1405
ADDRESS:									1406
NAME:									1407
ADDRESS:									1408

8 BUSINESS HISTORY

LIST EACH POSITION FOR THE PAST TEN YEARS, STARTING WITH CURRENT POSITION. INCLUDE SELF-EMPLOYMENT, UNEMPLOYMENT, PART-TIME AND ALL MILITARY SERVICE. IF NECESSARY, CONTINUE ON SEPARATE SHEET. *Please fill in complete address (Street, City, State, Zip Code).*

NAME AND COMPLETE ADDRESS OF EMPLOYER	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR	FULL OR PART-TIME	POSITION HELD	REASON FOR LEAVING	
NAME: Prudential Ins Co.	8	80	Present		FT	Agent	N/A	1501
ADDRESS: 5600 Monroe St Toledo Ohio 43560								1502
NAME: Haskins Furniture Co.	7	71	8	80	FT	Owner	N/A	1503
ADDRESS: 7208 Monroe St Toledo, Ohio 43612								1504
NAME:								1505
ADDRESS:								1506
NAME:								1507
ADDRESS:								1508
NAME:								1509
ADDRESS:								1510

9 ARE YOU CURRENTLY ENGAGED IN ANY OTHER BUSINESS EITHER AS PROPRIETOR, PARTNER, OFFICER, DIRECTOR, TRUSTEE, EMPLOYEE, AGENT OR OTHERWISE? (1500)

YES ☐ NO ☒ IF YES, EXPLAIN _____

10 RESIDENTIAL HISTORY

Give all home addresses for the past ten years (other than current address). If necessary continue on separate sheet.

ADDRESS: STREET	CITY	STATE	ZIP	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR	
1212 Upton Ave	Toledo	Ohio	43607	7	71	Present		1601
								1602
								1603
								1604

I authorize and request any and all of my former employers and any other person to furnish to the agency, jurisdiction or organization with which this application is being filed, or any agent acting on its behalf, any information they may have concerning my credit worthiness, character, ability, business activities, educational background, general reputation, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof. Moreover, I hereby release each such employer and each such other person from any and all liability of whatever nature by reason of furnishing such information to the agency, jurisdiction or organization or any agent acting on its behalf.

Further, I recognize that I may be the subject of an investigative consumer report ordered by the agency, jurisdiction, or organization with which this application is being filed, and that I have the right to request complete and accurate disclosure by such agency, jurisdiction, or organization of the nature and scope of the investigation requested.

NAME OF APPLICANT (PRINT OR TYPE)	SIGNATURE OF APPLICANT	DATE
Robert C. Haskins Sr.	Robert C. Haskins Sr.	06-17-83

NASAA/NASD CRD NO.	SIGNATURE OF APPROPRIATE SIGNATORY	DATE
	B B Gimbel	JUL 7 1983

NAME OF APPROPRIATE SIGNATORY (PRINT OR TYPE): Barbara B. Gimbel

Rev. Form U-4 1/81

	YES	NO	
A.	X		2720
B.	X		2720
C. been refused coverage under a fidelity or surety bond, or has any surety company paid out any funds on your coverage or cancelled such coverage?		X	2735
D. had a license, permit, certificate, registration or membership denied, suspended, revoked or restricted, or had an application withdrawn for cause?		X	2650
E. been the subject of any order, judgement, decree or other sanction of a foreign court, foreign exchange, or foreign governmental or regulatory agency?		X	2560
F. been arrested or indicted for any felony or misdemeanor involving the purchase, sale or delivery of any security or commodity, or arising out of the conduct of the business of a broker, dealer, municipal securities dealer, fiduciary, investment company, investment adviser, underwriter, bank, trust company, insurance company or other financial institution, or involving any crime in which violence or threats of violence against any person, dishonesty, wrongful taking of any property, or any manner of fraud was a factor, or involving conspiracy to commit any of the foregoing?		X	2830
G. been convicted, or pleaded guilty or nolo contendere to any felony or misdemeanor except minor traffic offenses?		X	2870
H. been a principal or employee of any firm, corporation or association which, while you were associated with it, was convicted of, or pleaded guilty or nolo contendere to, any felony or misdemeanor?		X	2890
I. or has any firm, corporation or association of which you have been a principal or officer failed in business, made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt?		X	2790

8 While associated in any capacity in the securities, commodities, investment advisory, real estate, banking or insurance industry or any other business have you ever:

	YES	NO	
A. been found by the Securities and Exchange Commission or in any jurisdiction to have willfully made or caused to be made any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or omitted to state any material fact, which was required to be stated, in any application for registration or report required to be filed under the Federal securities laws or under the securities law of any jurisdiction, or in any proceeding before the Securities and Exchange Commission or any jurisdiction relating to securities, the conduct of business or registration as a broker, dealer, municipal securities dealer, or investment advisor or associated person thereof?		X	2880
B. willfully made or caused to be made any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or omitted to state any material fact, which was required to be stated, in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization?		X	2890
C. had any temporary or permanent injunction or administrative order entered against you or any broker, dealer, investment advisor, municipal securities dealer, bank or commodities firm with which you were associated in any capacity at the time such injunction was entered?		X	2900
D. been associated in any capacity with any broker, dealer, municipal securities dealer, investment advisor or commodity firm which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization?		X	2620
E. been found to be the cause of any action cited in 270?		X	2910
F. been associated as an officer, a director, a general partner, or an owner of 10 percentum or more of the voting securities of, or a person who, directly or indirectly, through agreement or otherwise, exercised or had power to exercise a controlling influence over the management or policies of a broker, dealer or municipal securities dealer which had been adjudicated bankrupt or for which a trustee has been appointed pursuant to the Securities Investor Protection Act of 1970?		X	2750

9 Are you currently:

	YES	NO	
A. the subject of any unsatisfied judgements or liens?		X	2740
B. associated in any endeavor related directly or indirectly to business or financial activities with any person whom you know, or in the exercise of reasonable care should know, to be subject to a statutory disqualification?		X	2920
C. the subject of any investigation or proceeding, or have you ever been the subject of discipline or found to have violated or to have aided, abetted, counselled, commanded, induced or procured the violation of any law, rule or regulation by any securities, commodities or banking agency or jurisdiction, any national securities exchange, registered securities association or clearing agency or by any other agency or jurisdiction?		X	2702

Robert L. Hascix Sr.
NAME OF APPLICANT (PRINT OR TYPE)

SIGNATURE OF APPLICANT — DATE 06-17-83

NASAA/NASD CRD NO.

Barbara B. Gimbel
NAME OF APPROPRIATE SIGNATORY (PRINT OR TYPE)

B.B. Gimbel — JUN 7 1983
SIGNATURE OF APPROPRIATE SIGNATORY — DATE

ATTACH PASSPORT SIZE AND QUALITY PHOTO

APPLICANT'S NAME (type or print)

Rev. Form U-4 1-81

Page 3 of 4

Form U-4

... hereby certify that I have read and understand the foregoing statements and that my responses are true and complete to the best of my knowledge.

2. I hereby apply for registration with the organizations and states indicated in Question 8 and, in consideration of such organizations and states receiving and considering my application, I submit myself to the jurisdiction of such states and organizations and hereby certify that I have read, understand and agree to abide by, comply with, and adhere to all the provisions, conditions and covenants of the statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the states and organizations as they are and may be adopted, changed or amended from time to time, and I agree to comply with, be subject to and abide by all such requirements and all rulings, orders, directives and decisions of, and penalties, prohibitions and limitations imposed by such states and organizations, subject to right of appeal as provided by law; and I agree that any decision of such states and organizations as to the results of any examination(s) that I may be required to pass will be accepted by me as final.

3. I further agree that neither the states or organizations nor their officers, employees, and others acting on their behalf shall be liable to me for action taken or omitted to be taken in official capacity or in the scope of employment, except as otherwise provided in the statutes, constitutions, certificates of incorporation, by-laws or the rules and regulations of such states and organizations.

4. I authorize the states and organizations to make available to any employer or prospective employer, or to any federal, state or municipal agency, or any securities or commodities industry self-regulatory organization any information they may have concerning me; and I release the states and organizations, their employees and agents, from any and all liability of whatever nature by reason of furnishing such information.

5. I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations with which I register, as indicated in Question 8.

6. I, the undersigned, for the purpose of complying with the laws of the State(s) I have designated in Item 8 relating to either the registration or sale of securities or commodities, hereby irrevocably appoint the administrator, of each of these State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process of pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the aforesaid laws of said State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State and had lawfully been served with process in said State(s). It is requested that a copy of any notice, process or pleading served hereunder be mailed to me at my residence.

NOTARIZATION OF APPLICANT'S SIGNATURE

6-17-83 — DATE
Lynn C. Myers — SIGNATURE OF WITNESS
06-17-83 — DATE
[signature] — SIGNATURE OF APPLICANT

WITNESS MUST BE ONE OF THE FOLLOWING. PLEASE CHECK APPROPRIATE BOX.

☐ PARTNER OF THE FIRM ☒ BRANCH OFFICE MANAGER
☐ OFFICER OF THE CORPORATION ☐ AUTHORIZED EMPLOYEE

SS# OR NASD ORG NO.

STATE OF Ohio COUNTY Lucas. SS

SUBSCRIBED AND SWORN BEFORE ME THIS 17 DAY OF June A.D. 19 83 BY Lynn C. Myers NOTARY PUBLIC

MY COMMISSION EXPIRES 5-24-84 COUNTY OF Lucas STATE OF Ohio

To the best of my knowledge and belief, the applicant is currently bonded where required, and, at the time of approval, will be familiar with the statute(s), constitution(s), rules and by-laws of the agency, jurisdiction or self-regulatory organization with which this application is being filed, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein. I agree that, notwithstanding the approval of such agency, jurisdiction or organization which hereby is requested, I will not employ the applicant in the capacity stated herein without first receiving the approval of any authority which may be required by law. This firm has communicated with all the previous employers of the applicant during the past three years, as set forth below:

EMPLOYER	NAME OF PERSON CONTACTED	POSITION OF PERSON CONTACTED	EMPLOYED FROM	EMPLOYED TO	NOW CONTACTED: WRITE	NOW CONTACTED: PHONE	NOW CONTACTED: WRITE & PHONE
Harkins Furniture	Owner		7-71	8-80			X

In addition, I have taken appropriate steps to verify the statements contained in this application and to inquire into the past record and reputation of the applicant.

JUN 7 1983 — DATE
Barbara E. Gimbel — PRINT NAME OF APPROPRIATE SIGNATORY

[signature] — SIGNATURE OF APPROPRIATE SIGNATORY

Please Do Not Write In This Area

Form U-4

EXHIBIT "A"

State of Ohio)
ss.
County of Lucas)

Robert L. Haskins, Sr., having been duly sworn, deposes and says that the following statements are true to the best of his knowledge.

1. That I am the plaintiff in the action styled Haskins vs. Prudential Insurance Company of America aka Prudential Insurance and Financial Services.

2. That some time after I was employed by Prudential in 1980, and after I became a member of the United Food and Commercial Workers Union and its Local 111, I was presented a U-4 Application by the defendant. I signed this U-4 Agreement on June 17, 1983. No union official or representative was present and no one explained to me what the arbitration clause referred to in paragraph 5 referring to question 8 meant. I was merely sent this form by the home office of Prudential to the best of recollection and told to sign and return it. I have subsequently filed amended U-4 applications on June 2, 1996, March 7, 1997 and May 28, 1997 and I have never been advised as to the significance of paragraph 10 referring to question 10 of the amended U-4 forms. Specifically, no one pointed out that I was agreeing to arbitrate all future disputes with my employer, nor was I ever given any information that would have been given content to any open-ended committment to arbitrate disputes required to be arbitrated under the rules, constitutions, or by-laws of the organizations indicated in item 10 of the form. I never

received any copies of any NASD rules, constitutions, or by-laws and I never received a copy of the rules from the Securities Exchange Commission, NASD, or NYSE, or any other organization, much less any amendments to these rules. Had I been aware of U-4's import, I would have discussed the need for the agreement with my employer and union and would have sought outside advice before signing. In fact, I was unaware until after this lawsuit was filed that the U-4 applications and amendments contained arbitration clauses and believed that my contract of employment was contained exclusively in my collective bargaining agreement.

3. During my tenure of employment, I attended approximately one half of the union meetings and the U-4 arbitration issue never came up in a meeting and never was discussed with me by any union officials, stewards, or officers to the best of my recollection.

4. A copy of the most recent collective bargaining agreement in my possession is attached hereto as Exhibit 1 hereto. Copies of the amendments to the U-4 application referered to above are attached collectively as Exhibit 2 hereto.

Further affiant sayeth naught.

/s/_____

Form U-4

Sworn to and subscribed before me, a notary public, in my presence by Robert L. Haskins, Sr. a person known to me this 3rd day of February, 1999.

/s/_____
Notary Public

APPENDIX E

42 U.S.C. §§ 2000e, *et seq.*

§ 2000e. Definitions

For the purposes of this subchapter–

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

* * *

(f) The term "employee" means an individual employed by an employer. . .

* * *

§ 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer–

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * *

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national original employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

* * *

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

* * *

§ 2000e-3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification

or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

§ 2000e-5 (f) (1)

. . . If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved of (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. . . .

* * *

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

* * *

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28.

* * *

APPENDIX F

42 U.S.C. § 1981

§ 1981. Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(B) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

APPENDIX G

29 U.S.C. §§ 621, 623, 626 & 631

§ 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that–

(1) in the face of rising productivity and affluence, older workers find themselves disadvantages in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

§ 623 Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer–

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

* * *

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

* * *

§ 626. Recordkeeping, investigation, and enforcement

* * *

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided,* That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed–

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

(e) Reliance on administrative rulings; notice of dismissal or termination; civil action after receipt of notice

Section 259 of this title shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title against the respondent named in the charge within 90 days after the date of the receipt of such notice.

(f) Waiver

(1) An individual may not waive any right under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum–

(A) the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;

(B) the waiver specifically refers to rights or claims arising under this chapter;

(C) the individual does not waive rights or claims that may arise after the date the waiver is executed;

(D) the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

(E) the individual is advised in writing to consult with an attorney prior to executing the agreement;

(F)(i) the individual is given a period of at least 21 days within which to consider the agreement; or

(ii) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement.

(G) the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

(H) if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be

understood by the average individual eligible to participate, as to–

(i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

(ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

(2) A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title may not be considered knowing and voluntary unless at a minimum–

(A) subparagraphs (A) through (E) of paragraph (1) have been met; and

(B) the individual is given a reasonable period of time within which to consider the settlement agreement.

(3) In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden or proving in a court of competent

jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(4) No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

§ 631 Age limits

(a) Individuals at least 40 years of age

The prohibition in this chapter shall be limited to individuals who are at least 40 years of age.

* * *

APPENDIX H

9 U.S.C. §§ 1, 2, 3, 4, 16

§ 1 "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between the District of Columbia and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable,

and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

§4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination.

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the

parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, exempt in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

* * *

§ 16. Appeals

(a) An appeal may be taken from–

(1) an order–

(A) refusing a stay of any action under Section 3 of this title,

(B) denying a petition under Section 4 of this title to order arbitration to proceed,

(C) denying an application under 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in Section 1292(b) of title 28, an appeal may not be taken from an interlocutory order–

(1) granting a stay of any action under Section 3 of this title;

(2) directing arbitration to proceed under Section 4 of this title;

(3) compelling arbitration under Section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

APPENDIX I

OHIO REVISED CODE CHAPTER 4112.02(A) and 4112.99

§ 4112.02

It shall be an unlawful discriminatory practice:

(A) For any employer, because of race, color, religion, sex, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

* * *

§ 4112.99

Whoever violates this chapter is subject to a civil action for damages, injunctive relief, or any other appropriate relief. A civil action commenced pursuant to this section shall be brought within two years after the alleged unlawful discriminatory practice occurred. This period of limitation specified in this section for purposes of a civil action authorized by this section does not affect any other period of limitation that is specified in another section of this chapter for purposes of a distinct civil action authorized by that other section, including, but not limited to, a civil action authorized by division (N) of section 4112.02, division (D) of Section

4112.021, division (A) of section 4112.051, or division (B) of section 4112.14 of the Revised Code.